
NO. 2007-CA-02179

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

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

BRIEF OF APPELLANT, WILLIE GEORGE KNIGHT

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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. Theses 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 Rogers, Esq., attorney for the Appellee, Covington County, Mississippi.
2. Covington County, Mississippi;
3. John Keyes, Esq., attorney for the Appellee, Harold Gene Jones, *non compos mentis*, care of Sennett Dickens, Guardian of Harold Gene Jones.
4. Danny Welch, Esq., attorney for the Appellee, Richard Collins
5. Harold Gene Jones, *non compos mentis*, care of Sennett Dickens, Guardian of Harold Gene Jones.
6. Richard Collins.
7. Ralph M. Vaughnn, as trustee of the Ralph Murphy Vaughnn, Revocable Trust
7. Willie George Knight, the Appellant
8. David Shoemake, Attorney for the Appellant, Willie George Knight
9. Hon. Larry J. Buffington, Chancellor.

Respectfully submitted,



DAVID SHOEMAKE

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APPELLEES

BRIEF OF THE APPELLANT WILLIE GEORGE KNIGHT

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.

STATEMENT OF THE CASE

On or about February 9, 2001, Covington County, Mississippi filed its Complaint against Willie George Knight seeking to have a private drive identified as "G. K. Lane" declared a county owned public road and to have the Appellant, Willie George Knight, remove a fence and/or a locked gate on said G. K. Lane. [R.E. 9] On or about May 9, 2001, Willie George Knight filed his Answer and Counterclaim against Covington County asserting among other things that the private road known as "G. K. Lane" was a private road, with the residence of Willie George Knight being the

only house on said private drive/road. The Answer and Counterclaim further asserted that the County nor the general public ever maintained or used the road as a public road. The Appellant, Willie George Knight also pled that the County did not properly adopt and/or designate this private road as a public road on the Minutes of the Board of Supervisors for Covington County as required so to do. The Answer and Counterclaim by Willie George Knight also sought damages and attorney's fees from and against Covington County. [R.E. 25]

Testimony in this action was heard on three (3) different dates by the Chancery Court of Covington County. The first hearing was on May 10, 2001, the second was on February 21, 2002, and the final hearing was on April 9, 2003. At the first hearing the Chancellor heard testimony from the current supervisor in whose district the road is located, and began hearing testimony from the former supervisor from the relevant district. However, in the middle of the former supervisor's testimony the trial court questioned both the parties regarding other potential parties to this action. Thereafter, the Chancellor ordered from the bench that any landowners adjoining the road designated as G.K. Lane be brought in as necessary parties. As such, Willie George Knight filed an Amended Answer and Counterclaim on or about November 28, 2001, naming 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 (hereinafter collectively referred to as Cross-Defendants). [R.E 35]

The Answer and Cross-Claim of Richard Collins to the Cross-Complaint of Willie George Knight was filed on or about December 21, 2001, and asserted that G.K. Lane was a public road to which Richard Collins and the general public were entitled to use. At the remaining hearings, the evidence reflected, and the Chancellor correctly found that the County had failed to prove that the private drive of Willie George Knight was nor had it ever been a public road. The evidence presented also established that the Cross-Defendants, and especially Richard Collins failed to meet the burden

of proof for establishing a prescriptive easement on said road. Furthermore, there was very little, if any, evidence presented by the other Cross-Defendants regarding past use which would establish any elements of a prescriptive easement. However, the Chancellor erroneously granted all parties a prescriptive easement in and to the road in the Final Judgment entered on or about January 5, 2007 (some four years after the final hearing on April 9, 2003). [R.E. 75]

Thereafter, Willie George Knight filed a Motion for New Trial and/or Rehearing, and/or Relief from Judgment on or about January 12, 2007. [R.E. 58] The other parties hereto each also filed respective motions seeking to amend and/or clarify the ruling in the Final Judgment of January 5, 2007. [R.E. 66, 71, 77] On or about April 25, 2007, the Court entered another Final Judgment overruling the motions for new trial and/or rehearing, but attempted to clarify the judgment. [R.E.83] Willie George Knight filed a Notice of Appeal on or about May 23, 2007. Richard Collins filed a second motion to Amend and/or Clarify Ruling in Final Judgment of April 25, 2007, and on or about May 25, 2007, the Cross-Defendant, Richard Collins also filed a Motion to Clarify Time for Filing Notice of Appeal. The Court on or about June 4, 2007 filed an Order to Clarify Time for Filing Notice of Appeal and set out that the time for filing a notice of appeal would be thirty (30) days from the date of the entry of the Court's Order disposing of the pending motion. On or about August 31, 2007, the Chancery Court of Covington County entered its Final Order which still awarded a prescriptive easement to the Cross-Defendants. [R.E. 86] This ruling was against the overwhelming weight of the evidence presented and was not supported by the testimony of the parties nor did it meet the requirements of relevant case law. As such, the Appellant, Willie George Knight proceeded with this appeal.

To add to the confusion in this case, the attorney for Harold Gene Jones, *NCM*, entered a stipulation that the lands in controversy, particularly G. K. Lane were subject to the prescriptive rights of Covington County, Mississippi. [R.E. 97] Further, the Defendant Ralph M. Vaughn, as

trustee of the Ralph Murphy Vaughn, Revocable Trust never filed an answer to the Complaint of Covington County or to the Crosscomplaint of Willie George Knight, nor did he appear before the Court on any occasion related to this action. The Chancellor, from the bench, granted a judgment to Covington County against Ralph M. Vaughn, as trustee of the Ralph Murphy Vaughn, Revocable Trust. [R.E. 98] No order was ever entered as to this judgment of which the Appellant herein has knowledge.

The serious procedural problem lies in the fact that the Chancellor later determined that G. K. Lane was not a public road, but never vacated these findings from the bench. Further, the Chancellor also granted Ralph M. Vaughn, as trustee of the Ralph Murphy Vaughn, Revocable Trust and Harold Gene Jones, *non compos mentis*, care of Sennett Dickens, Guardian of Harold Gene Jones, a prescriptive easement to G. K. Lane without either of those parties having ever entered any evidence or testimony about their own use and/or their predecessors in titles uses.

STATEMENT OF FACTS

On or about December 5, 1957, George Knight acquired the subject property on which a private drive was located. [R.E. 164] On or about May 7, 1999, Lona Mae Knight and Willie George Knight, the sole and only surviving heirs-at-law of George Knight who died on May 1, 1999, conveyed the subject property to Willie George Knight.¹ There exists on the subject property a small road/driveway which was used by the Knight family as their private driveway from 1957 through the present.[R.E. 147, 148, 149,170] In fact, the testimony revealed that there existed at the entrance to G. K. Lane, where it joined the paved public road, a posted sign and a poultry house sign advising of no trespassing as it was a disease free facility. [R.E. 136, 140, 143] The evidence presented also reflected that Mr. George Knight requested that his drive be given a name for E-911 purposes, but

¹

Willie George Knight is the son of George Knight and step-son of Lona Mae Knight both of whom were deceased at the time of this action was initiated.

not for designation as a public road. [R.E. 126,127]

On January 21, 1993, Richard Collins (hereinafter referred to as "Collins") purchased property adjoining G. K. Lane and George Knight's property. Collins testified that he attempted to obtain a right-of-way on G. K. Lane from George Knight before he acquired the property in 1993, but was refused by George Knight. [R.E. 108, 109, 119]. On June 28, 1993, Richard Collins obtained a Corrected Warranty Deed wherein he was granted a 50 foot right-of-way from Salem School Road to his newly acquired property from Stanley Jones and Sarah Jones (his predecessors in title). [R.E. 116] [E. 8] [R.E.189] The ownership map [R.E. 189, R.187] [E. 8] shows the paved public Salem School Road running in a generally Northeasterly direction. The hundred plus acres owned by Willie George Knight is North of the eighty acres purchased by Richard Collins from Stanley Jones. It also shows a fifty foot right of way from Salem School Road running to the eighty acres purchased by Richard Collins from Stanley Jones.

Shortly after the death of Mr. George Knight, Willie George Knight, the Appellant, placed a gate across the drive way to keep trespassers out of his and his step-mother's property. [R.E. 165] At that time, Collins was given a key to the gate and given permission to use the road. However, Willie George Knight later terminated said permission due to abuses by Collins. [R.E. 166] Shortly thereafter, Collins began a campaign with the Covington County Board of Supervisors to have G.K Lane declared a public road and to have the Board of Supervisors of Covington County remove the gate thereon. [R.E. 100, 101, 102, 110, 111, 113 120,168 178,188] This campaign by Collins lead to Covington County filling a frivolous lawsuit against Willie George Knight to have the fence and/or gates removed from G.K. Lane.

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 attempting to be designated 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 witnesses testified that George Knight owned chicken houses on his property and that the county may have hauled some gravel into that location to make it passable for the chicken trucks to get the chickens to the poultry plant, but this was a service provided to most all poultry growers at the time and/or to farmers in the county if so needed.[R.E.103] Mr. Mooney testified that he did not do regular maintenance on the road because there was not much traffic on it, but he also testified that he was not trying to claim it to be a public road. [R.E. 99-A]

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]

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 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]

Richard Collins testified that around 1957 there was a gate/fence put up by his predecessor in title Stanley Jones at the end of the road to keep cows from getting out. [R.E. 104, 106, 107] At the conclusion of the County's case, the Court expressed questions regarding the County meeting its burden of proof to establish this as a public road, in part because of the fence/gate put up by Stanley Jones at the end of the road in 1957. [R.E. 114] Another piece of evidence which reflected that this was not a public road was 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] The court in its ruling declared that the County had failed to prove that G.K. Lane was a public road. However, in that ruling it erroneously granted a prescriptive easement to Richard Collins

and the other Cross-Defendants to G. K. Lane across Willie George Knight's property.

Richard Collins through pressure on the Board of Supervisors, instigated this suit against Willie George Knight. The testimony of Richard Collins was that although he attempted to get a right-of-way from George Knight to use G.K. Lane before he purchased the property, he believed that G.K. Lane was in fact a public road. [R.E. 105, 108, 109, 119] Collins in his testimony stated time and time again that G. K. Lane was a public road, although prior to 1993 he had no business down the road. [R.E. 105, 111, 113.] At the final hearing on this matter, Collins continued to maintain that G. K. Lane was a public road. [R.E. 117, 118, 177] No other witnesses nor parties were as adamant in their testimony that G. K. Lane be made a public road as was Collins. Collins' determination to have this road declared a public road however resulted in his testimony failing to meet the burden for an award of a prescriptive easement.

As stated earlier, Mr. George Knight ran the county workers off after Collins attempted to have them begin working G.K. Lane. [R.E. 128, 129, 130, 131, 132, 133] Witness after witness testified that only Mr. George Knight worked the road. [R.E. 138, 147, 148, 149, 150, 155, 157, 161] Several witnesses related the fact that there were no trespassing signs at the entrance to G. K. Lane that Mr. George Knight had placed there. [R.E. 136, 143, 162] Robert Thompson and Clarence Eubanks both county employees testified that it was the drive way to George Knight's house and no one else used the road. [R.E. 132, 135, 136] Other witnesses also testified that no one other than the Knights used the road unless George Knight gave permission. [R.E. 144, 145, 146, 147, 158, 149, 161] The general reputation of the road in the community was that it was a private road owned by George Knight. [R.E. 134, 150, 152]

The evidence also reflected that George Knight would either give a person permission to use his road or they did not get to use it. The record reflects several instances where Mr. George Knight would either give permission and/or no one would go past his house on the road. Mr. Clarence

Eubanks testified about an occasion where he heard a vehicle driving down the road which he and George Knight could not see, but George Knight recognized the sound of the vehicle. The specific testimony was,

Q. Did anyone ever challenge Mr. George Knight's or any of his family's right to use that road?

A. Not as I know of. I was--George and me was in a chicken house there one day spreading shavings and I heard vehicle going back in there and we couldn't see, I couldn't see out and I said George, I hear something going back down that road down through there and he said yea, that's Tommy Tater. He said I gave him permission to go to that field, get to that field back in there, I didn't see nobody. I just heard them.

Q. Did the Jones family ever attempt to maintain any of the property on the George Knight side of the fence, the net wire fence?

A. No. I never seen nothing, seen them doing nothing over there. [R.E. 138, 139]

Later testimony reveals that Stanley Jones was also known as Tommy Tater Jones, Richard Collins' predecessor in title. [R.E. 153] This testimony reflects that not only did George Knight give Stanley Jones a/k/a Tommy Tater Jones, a/k/a Little Tater Jones permission, he also could recognize the sound of the vehicle without seeing it. It further demonstrates that Mr. Eubanks thought it odd for someone else to be using this road because he commented on it to Mr. George, and remembers it after all those years. There was also testimony that Richard Collins was not seen using the road until after George Knight's death in 1999. [R.E.147] Further evidence reflected that Collins was given permission by Willie George Knight after George Knight's death to use the road, but that said permission was later revoked by Willie George Knight. [R.E. 166, 167, 168] When considering the evidence in its entirety, there is no question that the road known as G. K. Lane/George Knight Lane was a private drive owned exclusively by George Knight. Further, that same evidence clearly reflects that each of the elements for a prescriptive easement were never met by any of the Cross-Defendants,

especially Collins. Therefore, the Chancellor's award of a prescriptive easement was improper as it was not supported by the evidence.

SUMMARY OF THE ARGUMENT

The Chancery Court erred in awarding a prescriptive easement to Richard Collins, and the other Cross-Defendants. The trial court in its order of April 25, 2007, found that the road in question was not a public road. Then the trial court goes on to state,

Once the Court has determined that it's not a public road, then equity, as well as use, requires for the Court to look as whether a prescriptive easement exists. This Court is satisfied by both the use of the Joneses, the Collins' predecessors in title, and the Knights, show a prescriptive easement should be granted to all parties bordering said property as well as that property at the end of said lane. The Court is further satisfied that neither party can show that they adversely possessed the property, in question, as said lane was used by all owners and predecessors in title to the lands adjoining the lane for their use and their visitors use. [R.E. 85]

In Moran v. Sims, 873 So.2d 1067, 1069 ¶4 (Miss Ct. App. 2004) the Court held,

An easement may be acquired by ten years possession, just as may fee simple title. Prescription occurs if there is ten years of use that is open, notorious, and visible; hostile; under claim of ownership; exclusive; peaceful; and continuous and uninterrupted. Permission from the record title owner will make the use permissive and not adverse. (Citations omitted.)

The evidence presented by Collins and the other Cross-Defendants utterly fails to meet this burden. Collins 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] Neither he, nor the other Cross-Defendant can establish a claim of ownership. Likewise, there was not any evidence of Collins' exclusive use of the road. Further, Collins and the other Cross-Defendant presented no credible evidence that the use, if any, was continuous and uninterrupted for ten continuous years. Collins actions show that he did not believe he had the right to use the road when he attempted to get a right-of-way from George Knight prior to his purchasing his land in 1993. [R.E. 108, 109, 119] Finally the evidence clearly reflects that Willie George Knight and/or George Knight gave permission to Collins to use the road but that it was later revoked. [R.E. 166] None of the elements are present for an award of a prescriptive easement

to Collins, Harold Gene Jones, *non compos mentis*, care of Sennett Dickens, Guardian of Harold Gene Jones, Ralph M. Vaughn, as trustee of the Ralph Murphy Vaughn, Revocable Trust, nor Covington County. In Myers v. Blair, 611 So.2d 969, 971 (Miss. 1992), the Court held, "The county claims the road public by prescription and, therefore, has the burden of proving, as does an individual claimant..." Neither Collins, Covington County, nor any other Cross-Defendant met the burden of proof against Willie George Knight to establish a prescriptive easement.

To award any relief to Ralph M. Vaughn, as trustee of the Ralph Murphy Vaughn, Revocable Trust, is clearly erroneous because he never filed any pleadings nor did he or any representative appear and offer any evidence of his use of the road. An award of prescriptive easement to Vaughn is erroneous. Furthermore, 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 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, Harold Gene Jones, *non compos mentis*, nor his guardian had no prescriptive rights to the road. Neither Harold Gene Jones, *non compos mentis*, nor Ralph M. Vaughn entered any evidence of their use of the road which would establish any prescriptive rights to which the Chancellor may find that they were entitled.

However, the evidence presented to the Court clearly set forth the elements for Willie George Knight's claim to remove the cloud from his title and/or to confirm his title by adverse possession. The majority of the witnesses testified that George Knight exclusively used the road and surrounding property, and that he held it under a claim of ownership which was open, notorious, and visible to the whole world. The reputation in the community was that G. K. Lane was his driveway and people expected to and did in fact seek his permission for any use thereof. The court abused its discretion in failing to remove the cloud from Willie George Knight's title, and award a judgment to him. The

trial court failed to properly apply the principals of prescriptive easement and/or adverse possession when rendering its decision.

Finally the trial court erred in not addressing and/or awarding damages and attorney's fees to Willie George Knight against Covington County when it denied Covington County's claim that G.K. Lane was a public road. The County knowingly filed a frivolous lawsuit based solely on political pressure from Collins. The County knew and/or should have known prior to filing the suit that it did not have a legitimate claim to G. K. Lane as a public road. Not only did this lawsuit unnecessarily cost the taxpayers of Covington County it also resulted in damages and expenses to Willie George Knight.

For these reasons, the Final Judgment of the Chancery Court of Covington County should be reversed and an appropriate judgment rendered by this Court. In the alternative, this action should be remanded for a determination of an award for attorney's fees and/or damages owed to Willie George Knight.

STANDARD OF REVIEW

It is well established in Mississippi that, "[t]his Court will not disturb the factual findings of a chancellor unless such findings are manifestly wrong or clearly erroneous. When substantial evidence exists in the record to support the chancellor's findings of fact, those findings must be affirmed." Rawls v. Blakeney, 831 So.2d 1205, 1207 (Miss. App. 2002), citing Denson v. George, 642 So.2d 909, 913 (Miss. 1994). However, the Court in Myers held,

[w]hen presented with what is essentially a question of law, the familiar manifest error/substantial evidence rules have no application to the appellate review of such questions. The principal of 'manifest error' applies only to a factual situation. This rule does not apply on questions of law. With regard to a pure question of law, the Supreme Court shall conduct a *de novo* review.
Id. at 971.

ARGUMENT

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.

The burden of proving the existence of a prescriptive easement is on the claimant asserting that his use and/or the use of his predecessors in title has ripened so that he has acquired an easement across the land of another. (See Moran, at ¶4 and Myers, at 971). The Mississippi Appellate Courts have consistently held that,

An Easement may be acquired by ten years possession, just as may fee simple title. Prescription occurs if there is ten years of use that is open, notorious, and visible; hostile; under claim of ownership; exclusive; peaceful; and continuous and uninterrupted. Permission from the record title owner will make the use permissive and not adverse.

Moran, at ¶4. (See also, Myers, at 971, citing Dethlefs v. Beau Maison envelopment Corp., 511 So.2d 112 (Miss.1987); Roy v. Kayser, 501 So.2d 1110, 1111 (Miss. 1987); Miss. Code Ann. §15-1-13.

The Trial Court properly found that the County could not establish G. K. Lane to be a county public road either by prescription nor by the official minutes of the Board of Supervisors. The Court in Myers held that, “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.” Id. Further, there was no proof of any actual work by the county on the board minutes, and “a board of supervisors can only act as a body through its minutes; That its minutes are the exclusive evidence of what the board did...” Id. Even the County employees testified that they never worked the road or that George Knight would not let them work it. However, the Trial Court seriously erred when it found that all parties had a prescriptive easement to the road.

When comparing the evidence presented at trial to each of the required elements to establish a prescriptive easement, it is clear that the Chancery Court’s decision was manifestly wrong and/or clearly erroneous. The overwhelming weight of the evidence presented contradicted any finding of a prescriptive easement to Collins or any other persons.

Elements of Prescriptive Easement

1. Open, Notorious, and Visible:

At trial Collins testified that prior to 1993, he had no reason to go down the driveway known as G.K. Lane. [R.E. 113] Therefore, prior to 1993, the Court must look at his predecessors in title and how they used the road². Stanley Jones testified that he lived down at the end of that road in 1957 for about a year and a half and then moved. Of utmost importance was Mr. Jones' testimony that he never claimed ownership to the road. [R.E. 173] Other witnesses 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, 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]

Stanley Jones and Richard Collins both testified that they *never did any work on the road nor make any claim of ownership in or to the road*. [R.E 117, 118, 175, 176] This fact, along with the fact that several witness stated that Stanley (Tater) Jones never went past George Knight's house, or if he did, he had George Knight's permission shows that Jones made no claim of ownership to G. K. Lane. [R.E. 153, 154, 158, 163] Ms. Tressie Knight testified that she visited George and Billie Knight quite often from 1960-2000, but that it was not until George's death in 1999 that she started

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It is important to remember that all adjoining landowners had access to a paved public road other than G. K. Lane.

seeing Collins attempt to use the road. [R.E. 146, 147] The evidence is clear that neither Collins, nor his predecessor in title Stanley Jones used the road in an open, notorious or visible way, until after 1999. Therefore, Collins and the other Cross Defendants failed to establish this element of a prescriptive easement.

2. Hostile

Stanley Jones and Richard Collins both testified that there were no acts of hostility by them toward George Knight. [R.E. 173, 176] Stanley Jones did not object to George Knight not allowing him to go past his house and did not attempt to stop George from using it. [R.E. 174] As such, Collins and the Cross-Defendants failed to establish this element of a case for prescriptive easement.

3. Under Claim of Ownership

It is this element wherein a claim for an award of a prescriptive easement clearly fails to meet the burden required by law. Neither Collins nor any other Cross-Defendant offered any evidence whatsoever, to support a claim of ownership to the road known as G.K. Lane. Specifically, Stanley Jones, Collins' predecessor in title, and Collins himself both testified that they were not making any claim of ownership to the road whatsoever and that it was a county public road. [R.E. 105, 111, 117, 118, 173, 175, 176, 177] According to Collins, prior to 1993 he had no business down G. K. Lane. [R.E.113] Collins testified that the basis for his claim against Willie George Knight was that he thought it to be a public county road. [R.E. 177] Collins testified that a public road is all its ever been and that is all he wanted it to be. [R.E. 118] However, the road was not on any official map when Collins purchased his property.

Collins' testimony regarding the road being public is also contradicted by the fact that he attempted to purchase an easement from George Knight across said road *prior* to the time he purchased his property. [R.E. 108, 109, 119] Collins testified as follows,

Q. Did you attempt to purchase a right-of-way across the George Knight Road from George Knight?

A. Well, I went to Mr. Knight for an easement.

Q. Did you go to Mr. Vaughn for an easement?

A. Yes, I did.

Q. And when was this?

A. That was before I bought the property.

Q. Before you bought the property from Stanley Jones?

A. Right. The reason I went to it, I said well, **I thought in my mind something like this might come up some day just like today.** And I knew if I could get an easement from Mr. Vaughn and Mr. Knight I would never have no trouble. I didn't know where the road was, on whose land, but I knew it was below their fences. I was going to try to get one from Harold Gene Jones, but I knew I couldn't do that. [R.E. 119]

His testimony is also contradicted by the fact that when he purchased the property from Stanley Jones on June 28, 1993, he purchased a fifty foot right of way from the paved public Salem School Road into the eighty acres that he purchased from Mr. Jones.[E. 8] [R.E. 189] [R. E.187]

Concerning the fifty foot right of way, Collins testified as follows:

Q. Well, I'm not trying to cause an issue about the timing or what you bought when, but the point is, you bought a 50 foot strip or right-of-way from the paved Salem School Road all the way from that road into the 80 acres that you bought from Stanley Jones?

A. Right.

Q. And this crosses some more of the Stanley Jones property? You bought the 50 foot right-of-way from Stanley Jones?

A. Right. I bought it all from Stanley Jones.

Q. Let me show you, this is my map that I've been using for my reference, but I've got it colored so that it's easier to see. It's the same map, the same land owners map that is attached to Exhibit

Number 8. And it shows the Willie George Knight property highlighted in yellow, does it not?

A. Right.

Q. And does it also show in yellow your 50 foot right-of-way from the Salem School Road into the big parcel of land that you bought?

A. Right.

Q. And you bought all of that from Stanley Jones and his wife?

A. Right.

Q. So you have a 50 foot right-of-way from that paved road into your property?

A. Well, there's a right-of-way – yes. [Transcript dated April 9, 2003, pages 15-16] [R.E. 191, 192]

If Collins truly believed it was a public road he would not have attempted to obtain an easement across the Knight property nor would he have purchased a fifty foot right of way from Jones running from Salem School Road to the eighty acre parcel. No one believing a road to be a county owned and maintained road is going to seek a right-of-way or easement from an adjoining private landowner. Nevertheless, this fact proves that Collins did not believe his predecessor in title had a claim of ownership to G. K. Lane, and thus neither would he. This fact also proves that he believed in order to have an easement into his property he would have to purchase a right of way from Stanley Jones or would either have to purchase a right of way from George Knight. [E. 17] [R.E. 192] Considering the testimony of Collins (and Stanley Jones) that he never made a claim to own G. K. Lane, along with the fact that he attempted to get an easement from George Knight at the time he purchase his adjoining property in 1993, the element of claim of ownership for prescriptive easement is not met.

4. Exclusive

In Moran v. Sims, at 1069, the Court held, “Exclusive use does not mean that no one else used

the driveway. Exclusivity here means that the use was consistent with an exclusive claim to the right to use.” Neither Collins nor the other Cross-Defendants offered any proof that any use was with the exclusive claim to said road. To the contrary, as stated hereinabove, Collins repeatedly stated that the road was a public road and that was all it was, and all he wanted it to be. Because Collins, was so adamant that G.K. Lane was and/or should be declared a public road, any claim of exclusivity is lacking, and therefore not met for purposes of establishing a prescriptive easement. Again, Collins’ seeking an easement prior to purchasing adjoining land from George Knight, reflects that he nor his predecessor in title believed that there was an exclusive claim to the right to use G. K. Lane.

5. Peaceful

In Dieck v. Landry, 796 So.2d 1004, 1009(Miss. 2001), the Court acknowledges that expected arguments and disagreements associated with a property dispute will arise. Perhaps Collins meets this element because there was no testimony of any real hostilities. The main reason for this is that Collins sought to have Covington County take the lead in his gaining access across G. K. Lane. However, this political pressure on the county establishes that there was no open, notorious or visible use by Collins.

6. Continuous and Uninterrupted for Ten Years

Neither Collins nor the other Cross-Defendants were able to establish this element of ten years use. Stanley Jones testified that he lived in a house at the end of G.K. Lane for about a year and a half in 1957, but then moved. Interestingly, this is approximately the same time when George Knight came into possession of the land, and the road later known as G.K. Lane. Collins did not use or attempt to use the road without permission for ten years against George Knight. Stanley Jones did not claim the road nor did Collins. Testimony was that Stanley (Tater) Jones never went past George Knight’s house, but that if he did he had George’s permission.

Willie George Knight testified about giving Collins permission but later revoked the grant due to abuses. In 2000, Willie George Knight put up a gate with a lock and gave a key to his step-mother, Billie to give to Collins. The testimony was,

Q. Did you give her a key to give to Mr. Collins?

A. I did.

Q. And did you allow Mr. Collins to use that gate?

A. Absolutely.

Q. And when did you stop allowing him to use that gate?

A. When she called me crying and said that people were going in and out of that gate and there was three locks on it. I came back and found out that he had told the power company to put their own lock on it and go in and out when they felt like it.

Q. So you terminated the permission for him to use the gate?

A. I absolutely did. [R.E. 166]

The testimony then reflected,

Q. What happened after you changed the lock so Mr. Collins couldn't get in the gate?

A. The county filed suit against me. [R.E 168]

The evidence also showed that all other predecessors in title also had permission from George Knight to use the road. Clarence Eubanks testified about George Knight granting permission to Stanley (Tater) Jones. Blakeney Knight, George Knight's nephew, testified that he had been going out to the property for years and never saw Tater Jones, Tony Pageant or Richard Collins go past George Knight's house. [R.E. 154] Willie George Knight testified that only the Knight family consistently used the road and that even all the way back to when Mr. Pageant would use the road, he would come by and visit with his dad before going in to haul hay out a couple of times a year. [R.E. 170]

The Myers Court held, “[U]se by express or implied permission or license, no matter how long continued, cannot ripen into an easement by prescription since adverse use is lacking.” Id. at 971. The evidence is clear that Mr. George Knight got along with his neighbors but that each of them considered the road to be his, and would ask his permission prior to use. It was not until after 1993 when Collins acquired property adjoining the road that problems began. It was Collins who sought to have the county “ditch” the road and work it, which George did not allow. Further, it was not until after George’s death in 1999 that Collins began actively trying to obtain rights to this road either by prescription or by use of political influence over the Board of Supervisors.³ Because all predecessors in title to Collins from 1957 forward had permission from George Knight to use the road, there can be no tacking. Further, Collins admitted that prior to 1993, he had no business down the road. Collins himself also enjoyed permission for some time to use the road. Regardless of his own permission, his time of ownership and use from 1993 through 2000 was not sufficient to establish ten years of continuous uninterrupted use.

Therefore the Chancery Court erred in awarding a prescriptive easement to any of the Cross-Defendants against Willie George Knight. Because Ralph M. Vaughn, as trustee of the Ralph Murphy Vaughn, Revocable Trust did not answer, defend nor present any evidence as to his use, if any, of G.K. Lane, as to that party the Judgment is clearly flawed. Further, Harold Gene Jones, *non compos mentis*, care of Sennett Dickens, Guardian of Harold Gene Jones, stipulated as to Covington County’s prescriptive use. When the Court found that such use did not exist by the county, there is no evidence or proof that Harold Gene Jones, via his Guardian, or any other predecessor in title used the property *at all*. Finally, Richard Collins was the only remaining Cross-Defendant left to which an assertion of a prescriptive easement could be awarded. However, he also essentially stipulated and argued that G. K. Lane was public and that he held no claim of ownership in said road.

³ See news paper articles of board meetings. [R.E. 178, 188] [E. 20, 21, 22]

All of the elements must be met to establish a prescriptive easement, however the evidence presented clearly reflects that none of the elements were meet sufficient to establish an easement by prescription. Because each and every element of a use sufficient to prove a prescriptive easement was not present as to all Cross-Defendants, the Judgment of the Chancery Court of Covington County on this issue should be reversed and rendered by this Court.

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.

Because Ralph M. Vaughn, as trustee of the Ralph Murphy Vaughn, Revocable Trust failed to answer and/or appear to defend this action, the Chancellor should have granted a Judgment against said revocable trust in favor of Willie George Knight. Further, Harold Gene Jones, *non compos mentis*, care of Sennett Dickens, Guardian of Harold Gene Jones by his stipulation asserted that G. K. Lane was a public road. Therefore, he should have no claim to prescriptive easement, but importantly, he offered no evidence to contradict George Knight's use and/or adverse possession of the property on and surrounding G. K. Lane.

Exhibit 25, depicts the layout of the road, and properties of the parties as they relate to one another⁴. [R.E. 179] Willie George Knight testified as to the map and the boundaries and the fact that his father maintained the property up to fence on the South side of G. K. Lane. He further testified and offered other witnesses that testified no one ever contested the Knight's ownership to all property North of the Jones' fence which is on the South side of G. K. Lane. [R.E. 169] The Chancery Court erred in not entering a Judgment for Willie George Knight to quiet title and/or confirm title to him and/or to enter a finding that he, and/or George Knight, acquired all North of the fence running East

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When viewing map so as to read the handwriting, the top of the map would be facing South, and the bottom is North.

and West on the South side of G. K. Lane as depicted in Exhibit 25. [R.E. 179] From Salem School Road the testimony reflected that it was about 200 feet to the fence designated with a number "2", just even with the Vaughn/Knight North/South fence. From that point to the far end of G. K. Lane to where the property line of Richard Collins' property begins, the Knights have maintained that property, and used it exclusively as their own since 1957, well over the ten years required.

The elements for establishing a claim for adverse possession are the same as those of a prescriptive easement which are; open, notorious, and visible; hostile; under claim of ownership; exclusive; peaceful; and continuous and uninterrupted for ten years. As presented herein, George Knight's use of this property as his own is sufficient to prove a claim for adverse possession.

1. Open, Notorious, and Visible:

George Knight's use was open, notorious and visible. Several witnesses testified that George Knight was the only person who ever maintained the road, or bush hogged down the sides. [R.E. 137, 138, 147, 148 149, 155, 156, and 161] Jerry McRaney testified that he had been going to see George Knight for 35 years and never saw anyone but George do work on the road. [R.E. 161] There were also posted, no trespassing signs and signs advising general public to keep out due to the chicken houses which were posted as you would come off of the public road onto G.K. Lane. Clarence Eubanks, testified that the chicken house sign was posted back in the 1950's or 1960's but that when he did work for George Knight around 1990 only the posted, no trespassing sign was still present because he no longer had chicken houses but that the posted sign had been there for as long as he could remember. [R.E. 136, 141, 142, 143] Tressie Knight and Jerry McRaney also testified that they saw the posted signs. [R.E. 148, 162]

2. Hostile

The fact that George Knight stopped Robert Thompson, the county road hand, from working the road establishes the element of hostility. [R.E. 128, 129] Thompson testified that George Knight

said, "Get out of this road, don't you be down in here, you ain't got no business down in here." Further, Willie George Knight put up two gates and eventually revoked any permission previously granted to Collins.

3. Under Claim of Ownership

The reputation in the community was that the road belonged to George Knight. As set out hereinabove, George Knight worked the road with his tractor, and mowed the sides with a bush hog. Blakeney Knight testified that George had a grader blade and a bush hog and worked the road. He further testified that no one helped George Knight with this because, "He knew how he wanted it done, and the bush hogging, he had steep banks and he wouldn't let anybody get on a tractor on the steep banks. He didn't want anybody to get hurt." This testimony also shows that he would bush hog up to the fence on the North side of the road along the Jones property/fence line. As also set forth hereinabove, anyone coming down the road would stop at George Knight's house and would not go further without his permission. There were posted/no trespassing signs at the entrance to the road that he kept up ever since the early 1960's. Further, Collins went to George Knight and sought an easement which was refused. Collins obtained a 50 foot right-of-way from Salem School Road to his newly acquired property from Stanley Jones and Sarah Jones who sold him the property. As such he is not, nor has he ever been landlocked or without access to his property. All of this evidence clearly establishes a claim of ownership to the road and all North of the Jones fence. [RE 179]

4. Exclusive

George Knight and ultimately Willie George Knight's use of the road meets the standard of exclusivity set out in Moran, at 1069. "Exclusive use does not mean that no one else used the driveway. Exclusivity here means that the use was consistent with an exclusive claim to the right to use." Id. The Knight family's use of G.K. Lane was consistent with an exclusive claim to the right to use the road. G. K. Lane was the driveway to the family home and chicken farm and other

property.

5. Peaceful

Stanley Jones testified that he and George were “buddies” and there was never any hostility between the two of them. [R.E. 173] There was never any disputes against George Knight regarding this road or his ownership of it. It was only after Willie George Knight revoked Collins’ permission to use the gate, and road, Collins went to the Board of Supervisors and had the county file suit. Therefore, the entire use of the road and adjoining property by the Knights was peaceful.

6. Continuous and Uninterrupted for Ten Years

George Knight acquired the property in 1957. At that point he began maintaining the road, and shortly thereafter place posted/no trespassing signs and/or poultry house “Keep Out” signs at the entrance to G. K. Lane. He used the road every day from 1957 until his death in 1999 to get to and from his house and other property. There is clearly no interruption in his use and no other party ever attempted to question his use until 2000 after his death when Collins began his campaign with the Board of Supervisors to have it declared a public road.⁵

Clearly, George Knight’s use and ultimately Willie George Knight’s use of the road and maintenance of the surrounding portions of the road up to the fence line of the Jones’ property on the South side of the road and the Vaughn property to the East all the way to the back side of the road where Collins now owns the property formerly owned by Stanley Jones establishes that George Knight, along with all surrounding land owners considered this property to be George Knight’s. As such, the Chancery Court of Covington County erred in not entering a Judgment in favor of Willie

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Because Harold Gene Jones, *non compos mentis*, care of Sennett Dickens, Guardian of Harold Gene Jones is a party it is important to note that §11-1-13 Miss. Code Ann., does set forth that the saving in favor of persons under disability of unsoundness of mind shall never extend longer than thirty-one (31) years. Calculating George Knight’s use from 1957, clearly the savings clause does not apply.

George Knight to remove cloud from title, confirm title to, and/or finding that the Knight's use of the road and maintenance of the property on either side of the road matured into fee simple title by adverse possession. The Chancellor's decision was manifestly wrong or clearly erroneous, and therefore the Appellant, Willie George Knight requests that this court reverse the Final Judgment of the Chancery Court and render its decision finding that Willie George Knight is the fee simple owner in and to G.K. Lane all the way to the current fence on the Northern boundary of the Jones property as it runs along said G. K. Lane.

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 that the private drive in question was actually a public road.

Although the Chancellor's omission regarding a ruling on the Counter-Claim by Willie George Knight was brought to the Court's attention, the Chancellor still did not address damages nor the attorney fees of Willie George Knight against Covington County. Because the County failed to prove its case, and essentially filed a frivolous lawsuit in which it knew it could not win against Willie George Knight, he should be entitled to receive his attorney fees and/or damages from the County resulting from that suit. At trial a statement for his attorney's fees and other related court costs were admitted into evidence [R.E. 172,180, 187] "An award of attorney fees is left to the discretion of the chancellor." Markofski v. Holzhauer 799 So.2d 162 (¶ 33) (Miss. App. 2001) (See also, Gray v. Gray, 745 So.2d 234 (¶26) (Miss. 1999). However, the Chancellor made no determination regarding this issue whatsoever, although it was addressed in the post-judgment motions by Willie George Knight.

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.

Miss. Code Ann. §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.”

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, Hascal 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] Other testimony by County employees reflected that they had no knowledge of or recollection of any inspection reports for the road in question, nor any official minutes which reflect any work being done on G.K. Lane. [R.E. 99, 121]

The County knew that it was not a public road but relented to political pressure by Collins, and his associates, to file this suit. There was no substantial justification for this action by Covington County and as such Willie George Knight was entitled to a determination by the Chancery Court

regarding this request for attorney fees. The fact that the Chancery Court failed to even address this issue is reversible error and the Appellant requests that this Court either render an opinion granting attorneys fees to Willie George Knight against Covington County and/or remand this issue back to the Chancery Court of Covington County for a determination as to an award of attorney's fees.

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 evidence presented clearly reflects that the Appellees did not present any evidence sufficient to meet the burden of proof to establish that a prescriptive easement existed. Specifically, Collins and his predecessor in title both testified that they never made any claim in and/or to the road. They never maintained the road, and Collins even testified that he would never be willing to maintain the road. [R.E. 117, 118] Furthermore, there was never a continuous ten year use of the road by Collins or his predecessor in title or the other Appellees which was not granted **by permission** of George Knight. The evidence of George Knight's previous grant of permission is supported by Collins' own testimony wherein he attempted to obtain an easement to use G. K. Lane from George Knight prior to the time Collins actually purchased his adjoining property in 1993. Therefore, the evidence did not support the Chancellor's findings and/or ruling, and as such the grant of a prescriptive easement to the Appellees and specifically to Collins was manifestly wrong and/or clearly erroneous and should be reversed.

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 testimony was that his 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. 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 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. Further, the trial court erred in awarding any prescriptive easement to Ralph M. Vaughn, as trustee of the Ralph Murphy Vaughn, Revocable Trust as he failed to answer the Crossclaim and/or present any evidence whatsoever. 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, he removed any claim he may have been entitled to assert as to his own ownership and/or prescriptive easement rights in and/or to the road. 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.

Finally, the Appellant, Willie George Knight is entitled to a finding awarding his attorney fees. The Chancery Court failed to address and/or award the Appellant his attorney fees against Covington County for the frivolous lawsuit which it instituted. The County knew that the road was

not reflected in any manner upon its official minutes, and even advised Collins to obtain his own attorney and file a suit for access across G. K. Lane. 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 which is not inconsistent with this Court's findings.

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 15th day of May, 2008.



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