

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**NO. 2008-CA-00148**

**RICHARD C. LENOIR,  
SANDRA SHAKELFORD and  
MILES EZELL**

**APPELLANTS**

**VS**

**WILLIAM "BILL" ANDERSON and  
WILLIAM YAWN, JR**

**APPELLEES**

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**ON APPEAL FROM THE CHANCERY COURT  
OF LAMAR COUNTY, MISSISSIPPI**

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**BRIEF OF THE APPELLANTS**

**ORAL ARGUMENT NOT REQUESTED**

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## 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.

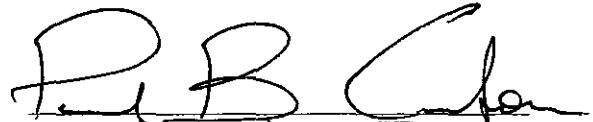
Richard C. Lenoir  
Plaintiff in the trial court and Appellant on Appeal

Sandra Shakelford  
Plaintiff in the trial court and Appellant on Appeal

Miles Randall Ezell  
Plaintiff in the trial court and Appellant on Appeal

William "Bill" Anderson  
Defendant in the trial court and Appellee on Appeal

William Yawn, Jr.  
Defendant in the trial court and Appellee on Appeal

Handwritten signatures of Robin L. Roberts and Paul B. Caston. The signature of Robin L. Roberts is on the left, and the signature of Paul B. Caston is on the right.

Robin L. Roberts, MSB [REDACTED]  
Paul B. Caston, MSB # [REDACTED]  
Attorneys of Record for Richard Lenoir

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Robin L. Roberts, MSB [REDACTED]  
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## **STATEMENT OF THE ISSUES**

1. Did the trial court err in its decision to use extrinsic evidence and mere conjecture to construe an unambiguous deed?
2. Did the trial court erred in treating the Lamar County Board of Supervisor's property tax exemption of cemetery property as a grant of land?
3. Did the trial court's opinion fail to adequately adjudicate the rights of the parties in regard to the location of the cemetery?

## **STATEMENT OF THE CASE**

### **I. Nature of the Case and Course of Proceedings Below**

This appeal comes to this Court from the Chancery Court of Lamar County and is a dispute by the descendants of Ephram Bounds over the boundaries of the Ephram Bounds Family Cemetery. The matter proceeded to trial and at the conclusion thereof, the lower court entered judgment in favor of the William "Bill" Anderson and William Yawn, Jr. All post-trial motions for a new trial and to amend or clarify the judgment were denied. This appeal has ensued.

### **II. Statement of the Facts**

In 1914, Ephram Bounds conveyed by deed, two 1 acre tracts out of a larger 40 acre parcel that he owned in Lamar County, Mississippi. [R at 47 and 83 ; R.E. at 3 and 4 ] The larger 40 acre tract is now owned by today's appellants, Richard Lenoir, Sandra Shakelford and Miles Ezell, who are descendants of Ephram Bounds. [R at ?; RE at ?] For reasons unknown, trial counsel did not make the aforementioned deed a part of the record at trial, but there was testimony as to the content of the deed and the trial court found as a fact that the deed reserved as a family cemetery a parcel consisting of 1 acre and 1 acre only. (R. at 47 and 83; R.E. at 3 and 4). The first 1 acre conveyance was for a parcel of land to be used as a family school. The second 1 acre conveyance was a parcel

of land to be used as a family cemetery. The two 1 acre parcels were not contiguous; they did not touch or meet at any point. The cemetery parcel was located in the northeast corner of the 40 acre parcel. The family school parcel was roughly in the middle of the 40 acre parcel and was only briefly used for the purpose of a school. The school building was never built. [T at 23-24]

Over the years, family members and friends of family members were buried in the Bounds Family Cemetery. At some point the actual burial area of the cemetery was fenced in, closing in .51 acres, per a survey. [R at 46; R.E. at 4].

After receiving a delinquent tax notice, members of the family applied to the Lamar County Board of Supervisors to exempt the cemetery for property tax purposes. Apparently using an aerial photograph, the Board of Supervisors estimated the cemetery to be 1.8 acres and gave a property tax exemption on an area that size.

A dispute arose among the descendants of Ephram Bounds as to the actual size of the cemetery, its location and the various rights of the parties. This was the issue tried to the Chancery Court of Lamar County in June of 2007. The defendants - the appellees here, successfully argued that the cemetery size was 1.8 acres and should not have been limited to the .51 acres under fence. The plaintiff - appellants, on the other hand argued that the cemetery consisted of the .51 acres under fence or at most only one acre. The trial court held that given Ephram Bounds grant of 1 acre for a family school and 1 acre family cemetery, that "it might be *surmised* (emphasis added) that Eph wanted, or would have wanted, that the land intended for one of his eleemosynary purposed could remain available for the other." [R at 48; RE at 4]. The trial court therefore expanded the size of the cemetery to 1.8 acres. The 1.8 acres was found from the Lamar County Board of Supervisor's property tax exemption of 1.8 acres.

## **SUMMARY OF THE ARGUMENT**

### **ARGUMENT**

#### **1. Standard of Review**

This Court conducts *de novo* review of pure questions of law. *Planters Bank & Trust Co. v. Sklar*, 555 So. 2d 1204 (Miss. 1990); *Countrywide Home Loans, Inc. v. Parker*, 975 So. 2d 233 (Miss. 2008). The trial court's factual findings are reviewed under the manifest error / abuse of discretion test. *Cassell v. Cassell*, 970 So. 2d 267 (Miss. App. 2007).

#### **2. Analysis**

##### **The Trial Court Erred In Using Extrinsic Evidence and Mere Conjecture To Construe an Unambiguous Deed.**

The trial court had no evidence before it that the boundaries of the cemetery were anything other than those contained in the deed by Ephram Bounds that created the cemetery. In expanding the cemetery to 1.8 acres, the court did not provide where these 1.8 acres were or what the boundaries of this newly created parcel were. The trial court was manifestly in error and abused its discretion in expanding the boundaries of the cemetery based on its perceived wishes of Ephram Bounds.

The acts of the Lamar County Board of Supervisors in exempting 1.8 acres from property taxes for a cemetery does not have the effect of enlarging the boundaries of the cemetery beyond those contained in the Ephram Bounds deed. While the Board may have had the legal authority to exempt from property taxes more land than was actually being used as a cemetery, its acts did not have the effect of enlarging said boundaries.

The trial committed manifest error and abused its discretion by expropriating the lands of



the plaintiffs / appellants based on the conjecture that Ephram Bounds might have wanted it.

Mississippi law is abundantly clear that when the language of a deed or contract is clear, definite, explicit and harmonious in all its provisions, and free from ambiguity throughout, then no “construction” of the deed is needed and that a court must look solely to the language of the instrument.

In the case of *Estate of Charles H. Deloach v. Wayne H. Deloach*, 873 So.2d 146 (Miss. 2004) the Mississippi Court of Appeals held that “When the language of the deed or contract is clear, definite, explicit, harmonious in all its provisions, and free from ambiguity throughout, the court looks solely to the language used in the instrument itself, and will give effect to each and all its parts as written. *Deloach* at 150. Citing *Royer Homes of Mississippi, Inc. v. Chandeleur Homes, Inc.*, 857 So. 2d 748, 754-55 (Miss. 2003). Likewise, our Supreme Court has also held: “It is axiomatic that clear and unambiguous language in a deed is controlling and may not be contradicted by extrinsic evidence. *Shaw v. Shaw*, 603 So.2d 287 (Miss. 1992).

Beyond considering extrinsic evidence, the trial court had no evidence at all before it to refute the clear and unambiguous language of the deed in question. Rather, the court merely held that “it might be *surmised* that Eph wanted, or would have wanted, that the land intended for one of his eleemosynary purposed could remain available for the other.” [R at 48 ; RE at 4]. Based on little more than this unsupported conjecture, the trial court expanded the size of the family cemetery to 1.8 acres.

The case of *Stuart v. Smith*, 344 So. 2d 127 (Miss. 1977) is also instructive. There, the Mississippi Supreme Court held that where there was controversy regarding the actual boundaries of a family cemetery, that the dimensions of the actual burial ground would govern. In this case, this

would equate to the .51 acres of burial ground under fence.

Of course, the best evidence of what Ephram Bounds wanted, or might have wanted, is what he *did* and what he put in writing. The trial court made findings of fact that the deed gave exactly 1 (one) acre for use as a family cemetery” [R at 83 ; RE at 3] yet, in seeming contradiction to the grantor’s express intent, the trial court found that the cemetery should be 1.8 acres based on an odd notion of “eleemosynary purposes.

The Trial Court Erred In Treating the Lamar County Board of Supervisor’s Property Tax Exemption of Cemetery Property as a Grant of land.

The trial court’s reliance on the Lamar County Board of Supervisor’s tax exemption is completely misplaced. While Miss. Code § 41-43-1 (1972) provides that the “board of supervisors of any county is authorized and empowered, **upon the petition and request to do so**, to establish or designate the location of any private family cemetery to be located in the county,” the board of supervisors minute entry in this case is of no effect. First and foremost, there is no evidence that a petition was ever filed to the board of supervisors as required by the statute.

Second, under any reasonable construction of the statute, the board of supervisors is not being empowered to determine the boundaries of a cemetery (which had already been done by the deed) or to appropriate a person’s land for the enlargement of a cemetery. Instead, the inartfully drafted language of the statute can best be described as the power to recognize that a cemetery exists and to exempt it for property tax purposes. Even though the language of the statute, on its face seems to indicate that a board of supervisors may “establish or designate the location of a private cemetery,” it runs contrary to all common sense and law that the board of supervisors can simply expropriate private property to establish a private cemetery. Instead, it only makes sense that the board of

supervisors' right is that to recognize what private parties have done for taxation purposes.

Courts in other states have recognized as well that rights in private cemeteries cannot be established through dedication. *Grinestaff v. Grinestaff*, 318 S.W.2d 881 (Ky. 1958).

The Trial Court's Opinion Failed To Adequately Adjudicate the Rights of the Parties In Regard To the Location of the Cemetery.

Nothing in the trial court's opinion gives any indication where the additional 1.3 acres of cemetery will be located. Where is the additional 1.3 acres to be added from? It cannot be taken from the 1 acre that was set aside for a family school as this acre is located diagonally across the larger 40 acre tract and is not contiguous with the cemetery. Which side of the current cemetery would the additional 1.3 acres be added to, or would all sides of the cemetery be expanded equally until 1.8 acres is encompassed? If there is a determination that the actual size is 1 acres, then where is the other half acre?

Simply put, if this is to be a determination of the intent of Ephram Bounds, then the cemetery must be circumscribed to either the one acre he described or the acreage under fence. Anything else is pure speculation and guess work. Further, the court should declare the rights of the parties vis-a-vis the usage of the cemetery – who has the right to be buried where?

**CONCLUSION**

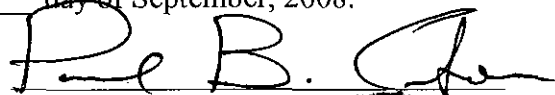
The trial court erred in using conjecture and speculation in construing an unambiguous deed. Mississippi law is clear that where the deed is unambiguous, that the deed is to be construed according to its terms.

The trial court further erred in treating the Lamar County Board of Supervisors exemption of 1.8 acres as exempt from property tax as a cemetery as an enlargement or a grant of land to expand the cemetery.

Finally the trial court erred in not fully adjudicating the rights of the parties with respect to the boundaries of the cemetery. If, as the trial court ruled, the cemetery consists of 1.8 acres and not 1.0 acres as described in the deed from Ephram Bounds, then the trial court should delineate the boundaries of said 1.8 acres to avoid further litigation among the parties.

The trial court has committed clear error as more specifically argued herein. The Court should remand this case to the Chancery Court of Lamar County for further consideration, specifically, to determine the precise boundaries of the Bounds Family Cemetery.

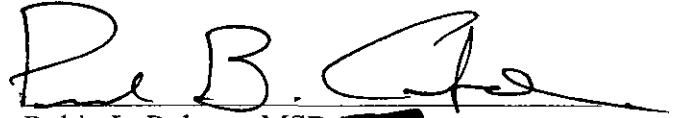
Respectfully Submitted this the 5<sup>th</sup> day of September, 2008.

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Robin L. Roberts, MSB  
Paul B. Caston, MSB # [REDACTED]  
Attorneys of Record for Richard Lenoir

**Certificate of Filing**

I, Paul B. Caston, hereby certify that I have this day filed with the Clerk of the Supreme Court of the State of Mississippi the foregoing Appellants brief by depositing an original and three copies of same in the United States mail, with all postage prepaid.

A handwritten signature in black ink, appearing to read "P.B. Caston", written over a horizontal line.

Robin L. Roberts, MSB # [REDACTED]

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**Certificate of Service**

I, Paul B. Caston, hereby certify that I have this day mailed a true and correct copy of the foregoing Appellants' Brief to the following by first class United States mail, postage prepaid.

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This the 5<sup>th</sup> day of September, 2008

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