IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2008-CA-00709

DAVID LANEIL STUART — APPELLANT

v.

KARON ALICE STUART — APPELLEE

# APPELLEE'S BRIEF

APPEAL FROM THE ELEVENTH CHANCERY DISTRICT,
CHANCERY COURT OF LEAKE COUNTY, MISSISSIPPI
HONORABLE CYNTHIA LEE BREWER, CHANCERY JUDGE

ORAL ARGUMENTS NOT REQUESTED

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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2008-CA-00709

DAVID LANEIL STUART — APPELLANT

v.

KARON ALICE STUART — APPELLEE

**I.**

**CERTIFICATE OF INTERESTED PARTIES**

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

1. David Laneil Stuart
2. Karon Alice Stuart
3. Honorable Morris C. Phillips, Jr.; Wright, Phillips and Sanders, Counsel for Defendant/Appellant
4. Edward A. Williamson and Christopher M. Posey; The Edward A. Williamson Law Firm, Counsel for Plaintiff/Appellee
5. Honorable Cynthia Lee Brewer, Chancery Judge of the Eighth Judicial District

Respectfully submitted, this the 25th day of March, 2009.

KARON ALICE STUART

BY: Christopher M. Posey

Christopher M. Posey, [redacted]
Edward A. Williamson, [redacted]
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II.

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

**NO. 2008-CA-00709**

**DAVID LANEIL STUART** **APPELLANT**

**v.**

**KARON ALICE STUART** **APPELLEE**

## I. STATEMENT OF THE ISSUES

1. This Court should affirm the Trial Court's April 2, 2008, *Order Enforcing This Court's June 23, 2004 Order for Survey, Execution of Deed, Sale of Personal Property, Etc,* as the Chancellor's findings were supported by substantial credible evidence in the record.

2. This Court should Order that the Plaintiff, Karon Alice Stuart, be awarded just damages of single or double cost, pursuant to M.R.A.P. 38, as a result of the frivolous appeal filed by the Defendant, David Laneil Stuart, as there are no meritorious issues for adjudication and the appeal is filed merely to harass the Plaintiff.

## II. STATEMENT OF THE CASE

### A. Course of Proceedings and Disposition in the Lower Court

On April 4, 2001, Plaintiff, Karon Alice Stuart, filed her *Complaint for Divorce* against her husband, Defendant, David Laneil Stuart, in the Chancery Court of Leake County, Mississippi. On September 23, 2003, the Plaintiff and Defendant executed and agreed to the terms of a *Property Settlement Agreement,* wherein they equitably and adequately agreed to the division of all marital property, while also agreeing to let the Trial Court decide a few contested issues. ARE: 13-17. Important to this appeal, in their *Property Settlement Agreement,* the parties agreed to divide their one hundred and twenty-six (126) tract of land as follows: forty (40) acres to Plaintiff and eighty-six (86)

acres to Defendant. ARE: 13. Then, on June 23, 2004, the Leake County Chancery Court entered an *Order for Survey, Execution of Deed, Sale of Personal Property, Etc.*, which ordered that the one hundred and twenty-six (126) acre tract of land be surveyed out into two separate tracts[1], to fulfill the terms of the parties *Property Settlement Agreement,* and further ordered that each party execute appropriate quit claim deeds to the other regarding their respective shares of this newly-divided real property. ARE: 7-12. Then, following multiple motions for contempt against both parties, relating to various temporary orders, a trial on all contested issues was held on February 14, 2005. Then, on April 11, 2005, the Leake County Chancery Court entered its final judgment (titled "Amended Final Judgment"), granting the parties a divorce on the grounds of irreconcilable differences. ARE: 38-41. Importantly, the division of the 126 acres of real property was not an issue in the trial or final judgment.

Soon thereafter, the Defendant appealed the Leake County Chancery Court's April 11, 2005, *Amended Final Judgment*, raising the following issues:

> I. Whether the Chancellor Erred In Awarding Alimony;
>
> II. Whether the Chancellor Erred in Awarding Attorney's Fees;
>
> III. Whether the Chancellor Erred In Failing to Grant Appellant a Speedy Trial;
>
> IV. Whether the Chancellor Erred In Finding Appellant in Arrears for Non-Payment of One Child Support Payment; and,
>
> V. Whether the Chancellor Erred in Granting Appellee One-Half of Appellant's Thrift Savings Plan.
>
> (ARE: 42-43).

The Mississippi Court of Appeals affirmed the *Amended Final Judgment* entered by the Leake County Chancery Court. ARE: 49. However, the Mississippi Court of

[1] 86 acres to the Defendant and 40 acres to the Plaintiff, pursuant to the *Property Settlement Agreement.*

Appeals did rule that the portion of the Judgment finding the Defendant in arrears on one child support payment should be reversed and rendered. The Mississippi Court of Appeals later denied the Defendant's *Motion for Rehearing,* and the Mississippi Supreme Court denied the Defendant's *Petition for Writ of Certiorari.* It should also be noted that Plaintiff's trial counsel, Honorable James Patterson "Pat" Donald, passed away on during this appellate process, and the undersigned counsel and was retained and substituted in as Plaintiff's counsel in this matter.

Following this appellate process, Plaintiff's counsel attempted to aid Plaintiff in resolving any remaining issues, obtain and receive all property and benefits due to her from the Court's Orders, and verify the Defendant's compliance with the Court's Orders. It is during this time, that Plaintiff became aware of the fact that Defendant had never executed a quit claim deed regarding the Court ordered division of marital real property. Plaintiff made multiple attempts to offer such deeds for the Defendant's execution and filing; however, the Defendant was unwilling to comply with the Court's Order. ARE: 18-26. Therefore, on December 21, 2007, Plaintiff filed her *Motion to Enforce the Order for Survey, Execution of Deed, Sale of Personal Property, Etc.*, asserting that, although the land had been properly surveyed, the pertinent deeds had not been properly executed and filed. ARE: 3.

On March 19, 2008, the Leake County Chancery Court, Honorable Cynthia Brewer presiding[2][3], heard oral arguments and testimony regarding this motion and one

[2] Judge William J. Lutz presided over the initial trial, motions and final judgment of the parties' divorce proceedings; however, at the time of filing Plaintiff's most recent motion, Judge Lutz was no longer a Chancellor in the Eleventh District and all of his cases were then being heard by Honorable Cynthia Brewer.

[3] Although Judge Brewer did not preside over the initial divorce proceedings, she did announce at oral arguments that she had fully reviewed the Court file and was fully aware of the long-term involvement between these parties and the court system since back in April of 2001.

other motion, which is not subject to this appeal, and announced her rulings and findings from the bench, finding that the undisputed sworn testimony before the Court shows that the deeds, as ordered by Judge Lutz, had not been signed by the Defendant, after being proffered based upon a survey that was required by Judge Lutz's Order. ARE: 34-35. Judge Brewer found and ruled that the deeds shall be signed by both parties and filed in an appropriate manner. On April 2, 2008, Judge Brewer executed her *Order Enforcing This Court's June 23, 2004 Order for Survey, Execution of Deed, Sale of Personal Property, Etc.* and ordered that both Plaintiff and Defendant shall sign, execute, deliver and file a good and sufficient quit claim deed, wherein each party conveys unto the other all of his/her rights, title and interest in and to the real property that is the other party's separate property under the terms of the parties' *Property Settlement Agreement.* ARE: 36. All pertinent quit claim deeds were drafted, executed and filed by the parties, pursuant to this Order. It is from this Order that the Defendant, David Laneil Stuart, takes this appeal.

**B. Statement of Facts**

On April 4, 2001, the Plaintiff, Karon Alice Stuart, filed her *Complaint for Divorce* against her husband, Defendant, David Laneil Stuart, in the Leake County Chancery Court. As a part of these divorce proceedings, the parties entered into a *Property Settlement Agreement,* which attempted to adequately and equitably divide their marital property. At the time of their divorce, the parties were joint owners of a one hundred and twenty-six (126) acre tract of land. ARE: 13-17. Since this appeal involves the single issue of whether the Trial Court erred in ordering the Defendant to sign the appropriate quit claim deeds regarding the division of this property, pursuant to a previous order of the Trial Court, only paragraphs one and two of the parties'

*Property Settlement Agreement* are applicable to this appeal, which sets forth as follows:

> 1. The Plaintiff shall have the exclusive use, control, and possession of the forty (40) acres of land and the three (3) chicken houses (including any and all profits thereon) located on said forty (40) acres . . . The forty (40) acres shall be in the form of a tract with no less than eight hundred feet (800) of frontage on the public road, located in the Northwest corner of the subject property (the 126 acre tract), with the understanding that said forty (40) acres shall have located thereon said three (3) chicken houses.
>
> 2. The Defendant shall have the exclusive use, control, and possession of the following items, to-wit: eighty-six (86) acres of land, subject to the terms of paragraph number one (1) above . . .
>
> (ARE: 13).

In an effort to fulfill the parties' agreements made in their *Property Settlement Agreement*, on June 23, 2004, the Trial Court entered an *Order for Survey, Execution of Deed, Sale of Personal Property, Etc.*, which details the requirement of surveying out these two separate parcels of land, so as to obtain an adequate legal description of the newly-divided parcels, and executing the appropriate deeds transferring title therein. Specifically, the Trial Court's Order sets out in pertinent part, as follows:

> (1) a surveyor shall be retained by the parties to conduct a survey of the pertinent real property of the parties, and as mentioned in the agreement between the parties, dated September 23, 2003 ... Such surveyor shall survey the property of the respective parties, and prepare and provide to the parties, through their attorneys, legal descriptions of the pertinent properties, as arrived at by his survey of the property, and a plat thereof. The parties shall each pay one-half (1/2) of the total amount of the survey cost and each party shall pay such amount as and when due;
>
> (2) Within seven (7) days of the date of the surveyor's providing to the parties the legal descriptions herein above mentioned in paragraph number 1 hereof, Defendant, David Laneil Stuart, shall sign, execute and deliver to Plaintiff, Karon Alice Stuart, a good and sufficient quit claim deed wherein he conveys unto her all of his rights, title and interest in and to the real property that is her separate property under the terms of said agreement; and,
>
> (3) within seven days of the date of the surveyor's providing to the parties the legal descriptions herein above mentioned in paragraph number 1 hereof,

> Plaintiff, Karon Alice Stuart, shall sign, execute and delivery to Defendant, David Laneil Stuart, a good and sufficient quit claim deed, wherein she conveys unto him all of her rights, title and interest in and to the real property that is his separate property until the terms of said agreement.
>
> (ARE: 7-8).

Importantly, the Trial Court's *Order for Survey, Execution of Deed, Sale of Personal Property, Etc.* goes on to further clarify other agreements made by the parties in their *Property Settlement Agreement*, specifically regarding the sale of poultry equipment. Therefore, it is clear that the intent of the Court was for its *Order for Survey, Execution of Deed, Sale of Personal Property, Etc.*, to be used to compliment the parties' *Property Settlement Agreement* and aid them in fulfilling these respective agreements. Furthermore, it is undisputed that an adequate survey and plat was conducted by Mr. Ottis D. Wolverton, a professional land surveyor, and provided to the Plaintiff regarding her forty (40) acre tract, pursuant to the terms of the parties' *Property Settlement Agreement* and the Trial Court's *Order for Survey, Execution of Deed, Sale of Personal Property, Etc.*

A final judgment was entered, granting the parties a divorce on the grounds of irreconcilable differences, and the Defendant took an appeal on five issues relating to that Order. Importantly, the Defendant did not appeal the issues of the division of this real property, the survey of this property, or the requirement that each party execute and file appropriate quit claim deeds relating to this property. At the conclusion of the appellate process, Plaintiff's newly-substituted counsel realized that these deeds had not been signed or filed, so they engaged in numerous communications with counsel for the Defendant regarding the execution of these quit claim deeds. ARE: 18-26. After many such communications with counsel for the Defendant and proffering properly drafted quit claim deeds for each parties' respective property, Plaintiff had no choice but to seek

judicial intervention by filing her *Motion Seeking Enforcement of the Court's Order for Survey, Execution of Deed, Sale of Personal Property, Etc.* regarding the parties' execution of the appropriate Quit Claim Deeds regarding this real property.

On April 2, 2008, the Trial Court entered an Order granting the Plaintiff's Motion and requiring the Defendant to sign the appropriate quit claim deeds. These deeds were signed by both parties on March 29, 2008, and filed in the Leake County Chancery Court on April 2, 2008. ARE: 36. Importantly, Plaintiff has used her respective forty (40) acre tract as her own, since the date of the parties' *Property Settlement Agreement*; however, she cannot fully and adequately use her property without resolution of the ownership issue.

## III. SUMMARY OF THE ARGUMENT

This Court should affirm the Trial Court's April 2, 2008, *Order Enforcing this Court's June 23, 2004 Order for Survey, Execution of Deed, Sale of Personal Property, Etc.*, as the Chancellor's finding were supported by substantial credible evidence in the record. Importantly, the following facts are undisputed by the Defendant:

1. That the parties entered into a *Property Settlement Agreement* seeking to equitably divide all their marital property, including their one hundred twenty-six (126) acre tract of real property in Leake County, Mississippi;

2. That the parties mutually agreed to divide this real property into two separate parcels, with forty (40) acres going to the Plaintiff and eighty-six (86) acres to the Defendant, pursuant to certain terms as set out in the Agreement;

3. That, shortly thereafter, the Trial Court entered an *Order for Survey, Execution of Deed, Sale of Personal Property, Etc.*, which required the parties to have the property properly surveyed and divided, pursuant to the terms of the

Agreement, and each party to execute and deliver a quit claim deed to the other regarding the transfer of their respective property to the other;

4. That such survey was properly and timely done on this property, pursuant to the Order;

5. That the Defendant then refused to sign the appropriate quit claim deeds transferring his title and interest in the Plaintiff's forty (40) acre tract to her;

6. That the parties agreed to let the Court decide several contested issues in their divorce proceedings; however, this division of real property was not a contested issue, as it had been mutually agreed upon and dealt with in an earlier Order of the Court;

7. That the Defendant took an appeal from the Trial Court's rulings on some of those contested issues; however, the Defendant did not appeal the issue of this division of real property and transfer of title and interest thereto, thus this Court has not made any prior rulings regarding this issue;

8. That the Defendant continued to refuse to sign the appropriate quit claim deeds transferring his title and interest in the Plaintiff's forty (40) acre tract to her after the deeds were again proffered by the Plaintiff; and,

9. That the Plaintiff then moved the Trial Court to enter an Order enforcing its earlier Order again requiring the Defendant to sign the appropriate quit claim deeds.

Therefore, the Order appealed from is simply an Order enforcing the Defendant's compliance with an earlier Order of the Court. Furthermore, the Defendant has cited no authority that would entitle him to the relief sought on this appeal. Finally, Plaintiff asserts that this appeal is frivolous pursuant to M.R.A.P. 38, as the Defendant has no

hope of success, as there are no meritorious issues for adjudication; therefore, Plaintiff requests that this Court award her just damages in single or double costs as a result of this frivolous appeal.

## IV. ARGUMENT

### A. Standard of Review

This Court has long held that it "would not disturb the findings of a Chancellor unless the Chancellor was manifestly wrong, clearly erroneous or an erroneous legal standard was applied." *Bell v. Parker*, 563 So. 2d 594, 596-97 (Miss. 1990). If a Chancellor's findings are supported by substantial credible evidence in the record, this Court will not reverse. *Huggins v. Wright*, 774 So. 2d 408, 410 (Miss. 2000) (Citing *Weeks v. Thomas,* 662 So. 2d 581, 583 (Miss. 1995)).

### B. Clearly the Chancellor's Findings are Supported by Substantial Credible Evidence in the Record

In her rulings from the bench after oral testimony and arguments from counsel, the Chancellor found that the sworn testimony before the Court was undisputed and that the Deeds, as ordered by the previous Chancellor, had not been signed by the Defendant after being proffered based upon a survey that was required by the Trial Court's *Order for Survey, Execution of Deed, Sale of Personal Property, Etc.* ARE: 34-35. It is undisputed that: (1) the parties entered into a *Property Settlement Agreement* seeking to equitably divide all of their marital property, including their one hundred twenty-six acre (126) tract of real property in Leake County, Mississippi, (2) that the parties' *Property Settlement Agreement* divided this real property into two separate parcels, with forty (40) acres going to the Plaintiff and eighty-six (86) acres to the Defendant, pursuant to certain terms as set out in that Agreement, (3) that the Trial

Court entered an *Order for Survey, Execution of Deed, Sale of Personal Property, Etc.* which required the parties to have this property properly surveyed and divided, pursuant to the terms of the *Property Settlement Agreement,* and each party to execute and deliver a Quit Claim deed to the other regarding the transfer of their respective property, (4) that such survey was properly and timely done regarding this property, and (5) that the Defendant then refused to sign a Quit Claim Deed transferring his interest in the Plaintiff's forty (40) acre tract to her.

Therefore, Defendant has wholly failed to show that the Chancellor abused her discretion in ordering that the Defendant sign these quit claim deeds, pursuant to the Trial Court's previous *Order for Survey, Execution of Deed, Sale of Personal Property, Etc.*, and the Chancellor's findings are clearly supported by substantial credible evidence in the record.

### C. The Order Appealed From is Simply an Order Enforcing the Defendant's Compliance With an Earlier Order of the Court

As stated earlier, the Defendant takes this appeal from the Trial Court's *Order Enforcing This Court's June 23, 2004, Order For Survey, Execution of Deed, Sale of Personal Property, Etc.* The Trial Court was compelled to require the Defendant to sign the quit claim deeds at issue and comply with an existing Order of the Court, with which the Defendant had previously refused to comply. In fact, the Defendant has offered no proof whatsoever regarding any good faith attempt to comply with the earlier Order.

As this Court has explained:

> The person who disobeys the order of a court of general jurisdiction does so at his peril. It is no answer that the order was improvidently or erroneously granted. Griffith, Mississippi Chancery Practice, 668 (2d ed. 1950). If a party could disobey a decree by a court of general jurisdiction, and defend on the ground that in his opinion the decree was erroneous, appellees would be constitutionally free to ignore all of the procedures of the law and respect for judicial process.

Appellees could not bypass orderly judicial review of the injunction by disobeying it.

*Masonite Corp. v. International Woodworkers of America,* 206 So. 2d 171, 183(Miss. 1967). *See also Maness v. Myers,* 419 U.S. 449, 458, 95 S. Ct. 584, 591, 42 L.Ed.2d 574 (1975).

**D. The Two Cases Cited in the Defendant's Brief Do Not Entitle Him to the Relief Sought**

Defendant cites only two cases in his entire brief in "support" of his position: *Leatherwood v. State,* 539 So. 2d 1378, (Miss. 1989) and *Golden v. Golden,* 151 So. 2d. 598 (Miss. 1963). But both of these cases are easily distinguishable from the present case and neither amount to authority entitling Defendant to the relief sought in this appeal.

The *Leatherwood* case is a criminal appeals case where the Mississippi Supreme Court held that: (1) counsel's performance during the guilt phase was deficient; (2) trial court exceeded proper scope for determining whether Defendant had shown prejudice by counsel's deficient performance by considering evidence of guilt and ultimate likelihood of acquittal; and (3) the Supreme Court lacks statutory duty and authority to peremptorily set maximum sentence of life imprisonment. *Leatherwood* at 1378. Nonetheless, the Defendant uses this case to support the proposition that, "it is axiomatic that a decision on a question of law decided on a former appeal becomes the law of the case, whether the case be civil or criminal, and will be adhered to on subsequent trials and appeals of the same case involving the same issues and facts. *Id.* at 1382. Although valid, this rule of law is not applicable to the present case, as the Defendant's first appeal did not raise the issue of the division of real property or the Court's Order that the property be surveyed and the parties sign and file appropriate

quit claim deeds regarding this real property. ARE: 42-43. Therefore, there was no question of law decided on the former appeal that was not adhered to on the subsequent hearing of the Plaintiff's *Motion to Enforce Order for Survey, Execution of Deed, Sale of Personal Property, Etc.* or on this appeal.

Also, the *Golden* case is equally distinguishable from the present case. The *Golden* case deals with two separate suits, in two separate courts. Initially, Ms. Golden filed an original bill of complaint in the Marshall County Chancery Court, in which she sued her husband for a divorce, custody of the children, and support money for the children. *Golden* at 566. Ms. Golden also charged in this original bill the facts concerning her execution, with her husband, of certain notes payable to First State Bank and charged that upon refusal of her husband to pay said notes, she was required to pay the same out of her personal estate. *Id.* In her divorce proceedings, Ms. Golden averred that she was entitled to receive recovery of the sums paid out by her in discharging said notes, plus interest. In the final decree in the divorce case, the court stated that the facts did not justify any relief on the notes to Ms. Golden. *Id.*

Then, Ms. Golden proceeded to file a separate lawsuit in Marshall County Circuit Court in an effort to recover the same monies paid out by her in the divorce proceedings to discharge notes signed by the parties prior to the divorce. *Id.* Essentially, the same issues were presented to the Chancery Court by the pleadings therein as were presented in the subsequent suit in the Circuit Court; therefore, this Court found that the issue had theretofore been adjudicated in the Chancery Court and Mr. Golden's defense of *res judicada* should have been sustained. *Id.* at 565.

Since the *Golden* case involved two separate suits, one in a court of equity and the other in a court of law, it is easily distinguishable from the present case. Furthermore,

domestic relations cases, such as this one, remain subject to recurring motions even after all prior contested matters are resolved. *Sanghi v. Sanghi,* 759 So. 2d 1250, 1253 (Miss. Ct. App. 2000).

Therefore, Plaintiff asserts that Defendant has cited no authority that would entitle him to the relief sought on this appeal. Therefore, this Court should not be required to address the single issue raised. *Warren v. Mississippi Worker's Compensation Comm'n,* 700 So. 2d. 608 (¶ 34) (Miss. 1997).

**E. Contrary to The Defendant's Assertions, The Trial Court Did Not Modify or Change Its Amended Final Judgment, Dated April 11, 2005, or The Parties' Property Settlement Agreement, Dated September 23, 2003**

The Defendant argues that the Trial Court modified or changed the *Amended Final Judgment,* dated April 11, 2005, and also modified the *Property Settlement Agreement,* signed by the parties and their attorneys, dated September 23, 2003; however, that was not the case at all. The Trial Court's *Amended Final Judgment* resolved numerous contested issues, following a trial on those issues; however, the division of real property and transferring of title of the same was not a contested issue, at that point, as the Trial Court had already fulfilled the parties' intent, as set forth in their *Property Settlement Agreement,* through its earlier *Order for Survey, Execution of Deed, Sale of Personal Property, Etc.* There is nothing in the *Amended Final Judgment* that expressly or implicitly attempts to modify, change or revoke the Trial Court's *Order for Survey, Execution of Deed, Sale of Personal Property, Etc.*, regarding the division and transfer of the parties' real property. ARE: 38-41. The only mention of these issues in the *Amended Final Judgment* is that the Trial Court reiterated its earlier

Order that the parties would each be responsible for one half (1/2) of the costs of the survey, which clearly indicates that the Trial Court intended that its earlier Order regarding the division of land still be in force and effect. ARE: 40.

**F. The Defendant's Argument is Nonsensical, Impractical and a Complete Injustice to the Plaintiff if Taken to Its Logical Conclusion**

The Defendant attempts to hang his hat on the argument that the *Property Settlement Agreement* merely gives the Plaintiff "the exclusive use, control and possession of forty acres of land...," (emphasis added) and that the *Amended Final Judgment* incorporated the provisions of the parties' *Property Settlement Agreement* into it by reference. Essentially, the Defendant is not disputing that the Plaintiff is entitled to the exclusive use, control and possession of the forty acres of land; however, he is disputing that the Plaintiff is entitled to ownership of said land, by requiring him to sign over any and all of his rights and interests in and to the property through a quit claim deed.

This argument flies in the face of the Court's June 23, 2004, *Order for Survey, Execution of Deed, Sale of Personal Property, Etc.*, which clearly requires the parties to have the one hundred twenty-six (126) acre tract of land surveyed out, pursuant to the provisions of the parties' *Property Settlement Agreement* and both parties to sign and file appropriate quit claim deeds relinquishing all their rights and interests to the other's newly-divided, respective property. ARE: 7-8.

Simply put, the Trial Court's *Amended Final Judgment* did not expressly or implicitly attempt to overrule the Court's June 23, 2004 *Order for Survey, Execution of Deed, Sale of Personal Property, Etc.*, and it is clear from the totality of the record that the Court and the Plaintiff intended for the Plaintiff to have ownership and exclusive

use, control and possession of the newly-surveyed out forty (40) acre tract and the Defendant to have ownership and exclusive use, control and possession of the newly-surveyed out eighty-six (86) acre tract. Additionally, the *Property Settlement Agreement* does not detail out the precise forty (40) acres that would become the property of the Plaintiff or the precise eighty-six (86) acres that would become the property of the Defendant; therefore, the Court's June 23, 2004 *Order for Survey, Execution of Deed, Sale of Personal Property, Etc.* was necessary to compliment the *Property Settlement Agreement* to fulfill the intentions of the parties.

One can only assume that the Defendant is attempting to argue that the Plaintiff and the Defendant should continue to remain co-owners of the entire one hundred twenty-six (126) acres of land, but that Plaintiff would have the exclusive use, control and possession of forty (40) acres and Defendant would have the exclusive use, control and possession of the remaining eighty-six (86) acres; however, this is nonsensical and illogical, as all martial property should be equitably divided between the divorcing parties in such an action. To follow the Defendant's arguments to their logical conclusion would mean that there would be a continued financial relationship between ex-spouses, who have endured a nearly eight year divorce battle.

In the alternative, the Plaintiff would assert that she could not logically have "exclusive use, control and possession of the property" if she does not have ownership of the property because the nature of her use, control and possession would be severely limited by her lack of ownership. Specifically, Plaintiff cannot effectively and profitably manage the chicken houses on the premises without being able to borrow money against the property to pay for necessary improvements and upgrades to the houses, unless she is the owner of the property. Also, she cannot exercise complete dominion and control

over the property without being the sole owner of the property, such that she could sell the property at her option, at any time.

**G. Plaintiff Should be Awarded Damages as a Result of the Frivolous Appeal Filed Herein by the Defendant, As There Are No Meritorious Issues for Adjudication and The Appeal is Filed Merely to Harass the Plaintiff**

Plaintiff submits that this Court should levy sanctions against the Defendant and his Attorney because their appeal is frivolous. The Litigation Accountability Act of 1988 instructs this Court to exercise its sound discretion in considering this request. Miss. Code. Ann. § 11-55-7 (Rev. 2002). According to Rule 38 of the Mississippi Rules of Appellate Procedure, if this Court determines that such appeal is frivolous, it "shall award just damages in single or double costs to the appellee." This Court has evaluated M.R.A.P. 38 frivolity by reference to M.R.C.P. 11. *Roussell v. Hutton*, 638 So. 2d 1305, 1318 (Miss. 1994). An appeal is frivolous when, objectively speaking, the appellant has no hope of success. E.g., *Little v. Collier*, 759 So. 2d 454 (¶ 20) (Miss. Ct. App. 2000).

Simply put, this appeal is nothing more than another act out of shear obstinacy and taken for the sake of obsessive dislike and further delay in the Plaintiff receiving the property and benefits duly owed to her through previous Orders of the Trial Court, in the parties' ongoing divorce proceedings. Throughout this nearly eight year divorce litigation, actions such as this, meant only to harass the Plaintiff and delay justice, have become customary tactics of the Defendant.

This is a case where the parties mutually agreed to divide their one hundred twenty-six (126) acre tract of land by giving the Defendant eighty-six (86) acres and the Plaintiff forty (40) acres, as specifically set out in the parties' *Property Settlement*

*Agreement.* ARE: 13. Then, the Trial Court took it one step further and ordered that the land be properly surveyed and divided to meet these goals and that each party sign over their rights and interests to the other's newly-surveyed property by executing and filing the appropriate quit claim deeds. The Defendant then refused to sign such deeds; therefore, Plaintiff sought to judicial intervention to require that the Defendant comply with the Court's previous Order regarding the signing of such deeds, so that she could fully and adequately use and control her property, as intended by the parties *Property Settlement Agreement.* ARE: 18-26. The Trial Court then heard oral testimony and arguments of counsel relating to the Plaintiff's *Motion to Enforce Order for Survey, Execution of Deed, Sale of Personal Property, Etc,.* regarding the signing of such Deeds, which the Trial Court granted, since the Defendant had already been ordered to do so nearly four years earlier.

It strains the realms of plausibility to find a circumstance under which the Defendant could expect to succeed on this appeal, and this is highlighted by the Defendant's lacking Appellant Brief, which contains very little information, numerous typographical errors, no cases supporting his position, and absolutely no argument whatsoever regarding any abuse of discretion or manifest error committed by the Trial Court.

Essentially, the Trial Court ordered the Defendant to sign and file these deeds; ARE: 7-12; the Defendant refused to do so; the Trial Court then ordered the Defendant to sign and file such Deeds for a second time; ARE: 36; and, now the Defendant seeks to appeal this Order. Therefore, objectively speaking, it does not seem plausible that the Defendant would have any hope of success on this appeal, such that the appeal is frivolous. Therefore, Plaintiff requests that this Court order that the Defendant and his

attorney be required to pay for just damages, costs, and attorney's fees associated with this frivolous appeal, as this Court deems appropriate.

## V. CONCLUSION

The Trial Court did not abuse its discretion in ordering that the Defendant sign these quit claim deeds, pursuant to the Trial Court's previous *Order for Survey, Execution of Deed, Sale of Personal Property, Etc.*, as the Chancellor's findings were clearly supported by substantial credible evidence in the record. Furthermore, the Defendant has cited no authority that would entitle him to the relief sought on this appeal.

Respectfully, Plaintiff, Karon Alice Stuart, requests that this Court affirm the Trial Court's April 2, 2008, *Order Enforcing this Court's June 23, 2004, Order for Survey, Execution of Deed, Sale of Personal Property, Etc.* and award her just damages in single or double costs for the Defendant's frivolous appeal.

Respectfully submitted, this the 25th day of March, 2009.

**KARON ALICE STUART**

**BY:** _____
CHRISTOPHER M. POSEY
Attorney for the Plaintiff

Appellee Counsel:

Christopher M. Posey ([redacted])
Edward A. Williamson ([redacted])
The Edward A. Williamson Law Firm
509 Church Avenue
Philadelphia, MS 39350
601-656-5634

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Appellee's Brief, has been forwarded via overnight delivery by the United Parcel Service of America, Inc. ("UPS"), to the following addressees:

Honorable Morris C. Phillips
Wright, Phillips & Brown
PO Box 436
Carthage, MS 39051

Honorable Judge Cynthia Brewer
Chancery Court Judge – District 11
PO Box 404
Canton, MS 39046

This the 25th day of March, 2009.

**CHRISTOPHER M. POSEY**