

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2008-CA-00709

DAVID LANEIL STUART

APPELLANT

VS

KARON ALICE STUART

APPELLEE

**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:

David Laneil Stuart and Morris C. Phillips, Jr., Appellant's (Defendant's) Attorney;

Karon Alice Stuart and Christopher M. Posey and Edward A. Williamson, Appellee's (Plaintiff's) Attorneys;

Honorable Cynthia Lee Brewer, Chancery Judge of the Eighth Judicial District, Chancery Court of Leake County, Mississippi.

DAVID LANEIL STUART, APPELLANT,  
BY HIS ATTORNEY, MORRIS C. PHILLIPS, JR.



Morris C. Phillips, Jr.

Attorney for Appellant  
Wright, Phillips & Sanders  
P. O. Box 436  
101 North Van Buren Street  
Carthage, MS 39051  
(601) 267-8061

## **Table of Contents**

Certificate of Interested Parties.....	i
Table of Contents.....	ii
Table of Cases, Statutes and Rules.....	iii
Statement of Issues.....	p. 1
Statement of the Case.....	p. 1-2
1. Course of Proceedings and Disposition in the Lower Court.....	p. 1
2. Statement of Facts.....	p. 1-2
Summary of Argument.....	p. 2
Argument.....	p. 3-4
1. The Court Erred In Modifying Or Changing The Amended Final Judgment of the Lower Court After Appeal.....	p. 3-4
Conclusion.....	p. 4
Certificate of Service.....	p. 5

### **Table of Cases, Statutes and Rules**

1. Goldmen v. Golden, 151 So.2d 598, 599 (1963), 246 Miss 562.....p. 4
2. Leatherwood v. State, 539 So.2d 1378, 1382 (Miss 1989).....p. 3-4

## STATEMENT OF ISSUES

1. The Court erred by modifying the Amended Final Judgment of the Court dated April 11, 2005, after appeal and the issuance of a mandate by the Court of Appeals dated May 31, 2007.

## STATEMENT OF THE CASE

1. **Course of Proceedings and Disposition in the Lower Court:** David Laneil Stuart, Appellant (Defendant), defended against a Complaint for Divorce filed against him in the Chancery Court in Leake County, Mississippi, on April 4, 2001. An Amended Final Judgment was filed April 11, 2005, which was appealed and the Court of Appeals affirmed, except as to an arrearage of child support on October 17, 2006. Motion for re-hearing was denied on February 6, 2007, and Petition for Writ for Certiorari to the Supreme Court was denied on May 10, 2007, and mandate was issued May 31, 2007. The Appellee (Plaintiff) filed a Motion to Enforce the Order for Survey, Execution of Deed, Sale of Personal Property, Etc. on January 4, 2008, and which was heard on March 19, 2008. The Trial Court entered an Order Enforcing This Court's June 23, 2004 Order for Survey, Execution of Deed, Sale of Personal Property, Etc. on April 2, 2008, from which this appeal is taken.
2. **Statement of Facts:** The Appellant (Defendant) appeals from an Order of the Trial Court dated April 2, 2008, C.P. Volume 1, Page 81, ARE 36. The Trial Court

entered an Amended Final Judgment, which was filed April 11, 2005, ARE 38, in which the Court made the Property Settlement Agreement of the parties, filed on September 23, 2003, a part of the said Judgment as if copied therein in full, C.P. Volume 1, Page 42, ARE 13. The Property Settlement Agreement states "the Plaintiff shall have the exclusive, use, control and possession of the forty acres of land...." C.P. Volume 1, Page 42, ARE 13 . The Order of April 2, 2008, C.P. Volume 1, Page 81, ARE 36, ordered Appellant (Defendant) to execute, deliver and file a Quitclaim Deed to Appellee (Plaintiff) of the same property which Appellee (Plaintiff) received by the Property Settlement Agreement of September 23, 2003, T Volume 1, Page 32, ARE 34.

### **SUMMARY OF ARGUMENT**

1. The Court erred in sustaining Motion to Enforce the Order for Survey, Execution of Deed, Sale of Personal Property, Etc. and in entering Order Enforcing This Court's June 23, 2004 Order for Survey, Execution of Deed, Sale of Personal Property, Etc. for the reason that the Court modified the Amended Final Judgment of the Lower Court dated April 11, 2005, as to non-continuing items after an appeal to the Appeal's Court and a mandate of the Court of Appeals, having been entered on May 31, 2007, affirming the said Amended Judgment of April 11, 2005, except to arrearage on child support.

## ARGUMENT

1.        **THE COURT ERRED IN MODIFYING OR CHANGING THE AMENDED  
FINAL JUDGMENT OF THE LOWER COURT AFTER APPEAL:**

The Appellant (Defendant) argues that the Trial Court modified or changed the Amended Final Judgment of the Lower Court dated April 11, 2005, after appeal ARE 38, and issuance of a mandate, ARE 50. And also modified the Property Settlement Agreement, signed by the parties and their attorneys, dated September 23, 2003, T. Volume 1, Page 42, ARE 13. The said Property Settlement Agreement states "the Plaintiff shall have the exclusive, use, control and possession of forty acres of land...." The Trial Court erred in ordering the Appellant (Defendant) to sign, execute, deliver and file a Quitclaim Deed to the property, which had been dealt with in the Property Settlement Agreement by giving the Appellee (Plaintiff) the exclusive, use, control and possession of the forty acres of land and not title, as ordered by the Trial Court in the Order of April 2, 2008, T. Volume 1, Page 81 ARE 36.

The Appellant (Defendant) sites the following authorities:

"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.” Leatherwood v. State, 539 So.2d 1378, 1382 (Miss. 1989).


“A final judgment on the merits rendered by a Court of competent jurisdiction is conclusive as to the rights of the parties and their privies, an as to them constitutes an absolute bar to a subsequent action involving the same claim, demand, and cause of action. Golden v. Golden, 151 So.2d 598, 599 (1963), 246 Miss 562.

### CONCLUSION

1. Appellant (Defendant) contends that based on the argument and authorities cited that this cause should be reversed and rendered and the deed executed by Appellant (Defendant) pursuant to the Lower Court’s Order of April 2, 2008, should be set aside.


Respectfully submitted,

DAVID LANEIL STUART

BY: 

Morris C. Phillips, Jr.  
Attorney for Appellant (Defendant)

Morris C. Phillips, Jr.  
Attorney for Appellant

  
Wright, Phillips & Sanders  
P. O. Box 436  
101 North Van Buren Street  
Carthage, MS 39051  
(601) 267-8061

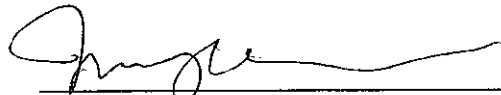
**CERTIFICATE OF SERVICE**

I, Morris C. Phillips, Jr., Attorney for Appellant (Defendant), DAVID LANEIL STUART, certify that I have this day served a copy of this Appellant's Brief by United States mail with postage prepaid on the following person at these addresses:

Honorable Cynthia Lee Brewer  
Chancery Judge  
P. O. Box 404  
Canton, MS 39046

Honorable Christopher M. Posey  
Honorable Edward A. Williamson  
THE EDWARD A. WILLIAMSON LAW FIRM  
P. O. Box 588  
Philadelphia, MS 39350  
Attorneys for Appellee

This the 20<sup>th</sup> day of January, 2009.



\_\_\_\_\_  
Morris C. Phillips, Jr.

PREPARED BY:

Morris C. Phillips, Jr.

██████████  
Wright, Phillips & Sanders  
P. O. Box 436  
101 North Van Buren Street  
Carthage, MS 39051  
(601) 267-8061