

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

**CURLEY CAMP
HOWARD CAMP
MARTY TATE, D/B/A TATE LOGGING**

APPELLANTS

VS.

NO. 2008-CA-01076

CLINT STOKES APPELLEE

**ON APPEAL FROM THE CHANCERY COURT
OF MONROE COUNTY MISSISSIPPI**

**REPLY BRIEF OF APPELLANTS
CURLEY CAMP, HOWARD CAMP,
MARTY TATE, D/B/A TATE LOGGING**

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ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

The Appellants, Curley Camp and Howard Camp, referred to as “Camp brothers,” and Marty Tate, d/b/a Tate Logging, referred to as “Tate,” file this, their Reply Brief to the Brief of the Appellee, referred to as “Stokes.” In his “Response Brief” Stokes delineates the following four issues:

(A) Stokes argues that Appellants Camp brothers and Tate are not entitled to expert witness fees and attorney’s fees because Paragraph (3) of the Statute, § 95-5-10, Mississippi Code of 1972, as amended, provides additional relief to the wronged landowner, and does not provide any relief to a successful Defendant

(B) Stokes argues that Rule 54(d) of the Mississippi Rules of Civil Procedure, together with the Comment thereto, only provides for Court costs to a prevailing party, not attorney fees or litigation expenses.

(C) Stokes argues that Appellants Camp brothers and Tate did not provide documentation to the lower Court for their claimed attorney fees and expenses and that the claimed expenses are not reasonable.

(D) Stokes argues that Appellants Camp brothers and Tate did not have a survey performed or conducted prior to the institution of the suit.

Appellants Camp brothers and Tate respond in this Reply Brief to these points enunciated by Appelle Stokes in the order set out above.

II. ARGUMENT

(A) RESPONSE TO STOKES' ARGUMENT THAT APPELLANT CAMP BROTHERS AND TATE ARE NOT ENTITLED TO EXPERT WITNESS FEES AND ATTORNEY'S FEES BECAUSE PARAGRAPH (3) OF THE STATUTE, § 95-5-10, MISSISSIPPI CODE OF 1972, AS AMENDED, PROVIDES ADDITIONAL RELIEF TO THE WRONGED LANDOWNER, AND DOES NOT PROVIDE ANY RELIEF TO A SUCCESSFUL DEFENDANT

Stokes states at page 4 of his Brief that "Each section of the statute speaks to the relief to be provided to the wronged landowner if it is shown that he in fact owned the timber." This is simply not correct. Stokes also states that "When read in the context of the entire statute, (3) merely provides that the Court in its discretion, may provide additional relief to the wronged landowner in the form of expert witness fees and reasonable attorney's fees for having to bring the action." The statute should, of course, be read in context. However, section (3) of the statute does not "provide additional relief to the wronged landowner."

§ 95-5-10, Mississippi Code of 1972, as amended, is clearly and distinctly structured and, in summary, provides the following relief:

Paragraph (1) of the statute provides compensation to a wronged landowner for the cutting of his timber.

Paragraph (2) of the statute provides additional damages to a wronged landowner for reckless disregard of the rights of the owner of the timber.

Paragraph (3) of the statute provides that all reasonable expert witness fees and attorney's fees shall be assessed as Court costs in the discretion of the Court. This separate and distinct paragraph of the statute makes no provision for relief only to the wronged landowner, as do the preceding two paragraphs.

The legislature in this statute has given the Court the discretion to assess attorney fees and Court costs to either side in its discretion. It is not against public policy that the Court be granted this authority by statute.

Had the legislature intended that Paragraph (3) apply exclusively to the wronged landowner, as do Paragraphs (1) and (2), it could have easily done so. "All" means what it says.

(B) RESPONSE TO STOKES' ARGUMENT THAT RULE 54(d) OF THE MISSISSIPPI RULES OF CIVIL PROCEDURE, TOGETHER WITH THE COMMENT THERETO, ONLY PROVIDES FOR COURT COSTS TO A PREVAILING PARTY, NOT ATTORNEY FEES OR LITIGATION EXPENSES.

Stokes' argument in his Brief concerning the application of Rule 54(d) of the Mississippi Rules of Civil Procedure, together with the comment thereto, is both unclear and convoluted. Paragraph (3) of the statute in question states that expert witness fees and attorney's fees may be assessed as Court costs. Rule 54(d), *Judgment; costs*, of the Mississippi Rules of Civil procedure states as follows:

Except when express provision therefor is made in a statute, costs shall be allowed as of course to the prevailing party unless the Court otherwise directs....

The Comment to Rule 54(d) states that:

Costs almost always amount to less than a successful litigant's total expenses in connection with a law suit and their recovery is nearly always awarded to the successful party.

In Mississippi jurisprudence expert witness fees and attorney's fees are not allowed except when authorized by statute. *Stanton & Associates, Inc. v. Bryant Const. Co., Inc.*, 464 So.2d 499 (Miss. 1985). Code § 95-5-10(3) is such a statute. The statute, in conjunction with Rule 54(d), clearly provides that as the prevailing parties, the Camp brothers and Tate may be awarded expert witness fees and attorney's fees in the discretion of the Court.

(C) RESPONSE TO STOKES' ARGUMENT THAT APPELLANTS CAMP BROTHERS AND TATE DID NOT PROVIDE DOCUMENTATION TO THE LOWER COURT FOR THEIR CLAIMED ATTORNEY FEES AND EXPENSES AND THAT THE CLAIMED EXPENSES ARE NOT REASONABLE.

The Chancellor in her Amended Order Denying Motion To Alter And Amend Opinion And Judgment And To Assess Court Costs (R. 17, R. E. 17) , stated as follows:

The basis for the Court's Order, as set out above, is that §95-5-10(3) does not apply to a successful Defendant in a case filed pursuant to §95-5-10, Mississippi Code of 1972, as amended. No hearing has been held by the Court as to any allowable amount of attorney fees and/or expert witness fees, and because the Court has found that §95-5-10(3) does not apply to successful Defendants in a timber trespass case under said statute, no such hearing has been deemed necessary by the Court.

The Camp brothers and Tate filed the appropriate Motion asking for the opportunity to present proof of their attorney's fees and expert witness fees in this case. The Chancellor, by the terms of her Amended Order, did not provide them with that opportunity. This proof will be presented to the Chancellor upon this Court's remand of this case to her.

(D) RESPONSE TO STOKES' ARGUMENT THAT APPELLANTS CAMP BROTHERS AND TATE DID NOT HAVE A SURVEY PERFORMED OR CONDUCTED PRIOR TO THE INSTITUTION OF THE SUIT.

Stokes argues in his Brief that the Camp brothers and Tate never offered to have a survey performed or conducted prior to the institution of the suit. This argument simply makes no sense. The trial Court confirmed that the timber cut in this case belonged to the Camp brothers. Stokes is the party that filed suit in this case. The Camp brothers and Tate had no obligation to have a survey performed in anticipation of the possibility that Stokes might file suit against them.

III. ORAL ARGUMENT REQUESTED

Appellants Camp brothers and Tate respectfully request oral argument. This case involves the interpretation of a statute. The decision of the Court in this case will affect other parties similarly situated in the future.

IV. CONCLUSION

This Court should render a decision reversing the decision of the Chancellor as to the assessment of expert witness fees and attorney's fees as costs, and remanding the case to the lower Court for hearing as to the amount of expert witness fees and attorney's fees to be allowed to Appellants Camp brothers and Tate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Dobbs', is written over a horizontal line.

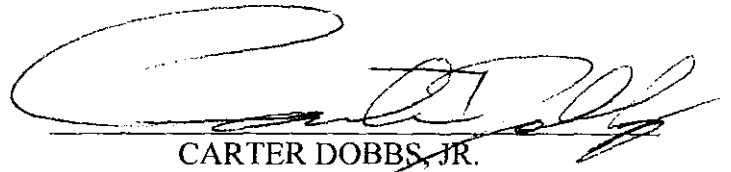
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CERTIFICATE OF SERVICE

I, Carter Dobbs, Jr., attorney for the Appellants, do hereby certify that I have, on this the 20th day of January, 2009, mailed by United States mail, postage pre-paid, a true and correct copy of the above and foregoing Appellants' Reply Brief to Honorable Jacqueline Estes Mask, Chancellor, at her usual mailing address of Post Office Box 7395, Tupelo, Mississippi 38802 and to the Appellee, Clint Stokes, at his mailing address of Post Office Box 2871, Columbus, Mississippi 39704.


CARTER DOBBS, JR.