

**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**

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**APPELLANTS'**

**SUPPLEMENTAL BRIEF**

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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 this Court may evaluate possible disqualifications or recusal.

Curley Camp	-	Defendant/Appellant
Howard Camp	-	Defendant/Appellant
Marty Tate, D/B/A Tate Logging	-	Defendant/Appellant
Clint Stokes	-	Plaintiff/Appellee
Carter Dobbs, Jr.	-	Attorney for Defendants/Appellants
Brad Blalock	-	Attorney for Plaintiff/Appellee
Honorable Jacqueline Estes Mask	-	Trial Judge



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## TABLE OF CONTENTS

	<u>PAGE</u>
I. APPELLANTS' STATEMENT OF THE ISSUES.....	1
II. STANDARD OF REVIEW.....	1
III. APPELLANTS' STATEMENT OF THE CASE.....	1
(A) NATURE OF THE CASE.....	1
(B) COURSE OF THE PROCEEDINGS AND DEPOSITION IN THE COURT BELOW.....	1
(C) STATEMENT OF THE FACTS RELEVANT TO THE ISSUE PRESENTED FOR REVIEW.....	3
IV. SUMMARY OF THE APPELLANTS' ARGUMENT.....	4
V. APPELLANTS' ARGUMENT.....	5
VI. CONCLUSION.....	10
VII. APPENDIX.....	—

### Appendix A

Order of the Court of Appeals requesting that the Chancellor  
reconsider her decision denying attorney's fees and expert witness fees

## TABLE OF CASES, COURT RULES AND STATUTES

	<u>PAGE</u>
<u>CASES</u>	
<i>Autrey v. Parson</i> , 864 So. 2d at 294 (¶4).....	1, 5, 7, 8
<i>Balouch v. State</i> , 938 So.2d 253 (Miss.2006).....	8, 9
<i>Harrison v. State</i> , 811 So. 2d 1134, 1137 (¶12) (Miss. 2001).....	5
<i>Kerr-McGee Chem. Corp. v. Buelow</i> , 670 So. 2d 12, 17 ( Miss. 1995).....	5
<i>Miss. Power Co. v. Jones</i> , 369 So.2d 1381, 1388 (Miss.1979).....	8
<i>Stockstill v. Gammill</i> , 943 So. 2d 35,50 (¶30) (Miss. 2006).....	6, 7
<i>Teasley v. Buford</i> , 876 So. 2d 1070, 1074 (¶2) (Miss. Ct. App. 2004).....	7
<i>Wallace v. Town of Raleigh</i> , 815 So.2d 1302, 1208 (Miss.2002).....	8

## COURT RULES

Rule 54(d), Mississippi Rules of Civil Procedure.....	5
---	---

## STATUTES

§ 95-5-10, Mississippi Code of 1972, as amended.....	1, 2, 3, 4, 5, 6, 7, 9
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## **I. APPELLANTS' STATEMENT OF THE ISSUES**

ISSUE 1: WHETHER THE TRIAL COURT AND THE COURT OF APPEALS ERRED IN RULING THAT THE ALLOWANCE OF ATTORNEY FEES AND/OR EXPERT WITNESS FEES, AS PROVIDED BY § 95-5-10(3), MISSISSIPPI CODE OF 1972, AS AMENDED, DOES NOT APPLY TO A SUCCESSFUL DEFENDANT IN A TIMBER TRESPASS CASE FILED PURSUANT TO SAID STATUTE.

## **II. STANDARD OF REVIEW**

The Court of Appeals in its Opinion ruled that the standard of review is de novo, because the appeal in this case involves a statutory interpretation, and is, therefore, a question of law, citing *Autrey v. Parson*, 864 So. 2d 294, 295 (¶4) (Miss. Ct. App. 2003). The Camp brothers agree that this is the correct standard of review in this case.

## **III. APPELLANTS' STATEMENT OF THE CASE**

### **(A) NATURE OF THE CASE.**

This appeal involves one single issue, and that issue is whether the trial Court may allow attorney fees and/or expert witness fees to a successful Defendant in a timber trespass case filed under § 95-5-10(3), Mississippi Code of 1972, as amended.

### **(B) COURSE OF THE PROCEEDINGS AND DISPOSITION IN THE COURT BELOW.**

Plaintiff/Appellee in this case will be referred to as "Stokes." Defendants/Appellants will be referred to as "Camp brothers" and "Tate."<sup>1</sup>

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<sup>1</sup> The Camp brothers and Appellant Marty Tate, d/b/a Tate Logging, are collectively referred to as Camp brothers.

Stokes and the Camp brothers are the owners of adjoining tracts of land in Monroe County, Mississippi. Stokes owns the tract of land lying to the East and the Camp brothers own the land lying to the West. Stokes filed a Complaint For Trespass And Wrongful Cutting Of Timber against the Camp brothers and Tate pursuant to § 95-5-10(3), Mississippi Code of 1972, as amended, alleging that Tate, with the Camp brothers' consent, cut timber across the common boundary line on his property. The Camp brothers and Tate filed an Answer denying Stokes' claim, and filed a Counter-Complaint For Cancellation Of Cloud On Title, asking the Court to determine that an old wire fence was the common boundary line between the respective tracts of land.

The trial Court determined that the central issue was the location of the common boundary line between the Camp brothers and Stokes, which determination would be dispositive of the issue of ownership of the land and timber allegedly wrongfully cut.

The case was tried, and on April 29, 2008, the trial Judge entered an Opinion And Judgment, (R. 3, R. E. 3) dismissing Stokes' Complaint For Timber Trespass and finding that the fence line alleged by the Camp brothers and Tate to be the true boundary line, was in fact, the boundary line between the lands of the respective parties.

On May 9, 2008 the Camp brothers and Tate filed a Motion To Alter And Amend Opinion And Judgment And To Assess Court Costs. On May 27, 2008 an Order Denying Motion To Alter And Amend Opinion And Judgment And To Assess Court Costs was entered (R.16, R. E. 16.) On June 13, 2008 an Amended Order Denying Motion To Alter And Amend Opinion And Judgment And To Assess Court Costs was entered (R. 17, R. E. 17.) On June 19, 2008 the Appellants filed their Notice of Appeal.

The Camp brothers and Tate filed an appeal with this Court of the Amended Order Denying Motion To Alter And Amend Opinion And Judgment And To Assess Court Costs. On

October 13, 2009 the Court of Appeals rendered a decision confirming the portion of the Judgment of the Chancellor in favor of the Appellee. Clint Stokes, ("Stokes") denying the Camp brothers, as successful Defendants in the timber trespass case, attorney fees and expert witness fees pursuant to § 95-5-10(3), Mississippi Code of 1972, as amended. The Camp brothers timely filed a Motion For Rehearing with the Court of Appeals, and on December 10, 2009 the Court of Appeals entered an Order denying the Camp brother's Motion For Rehearing.

It is from the decision of the Court of Appeal that the Camp brothers filed their Petition For Writ Of Certiorari to this Court.

On April 12, 2010 this Court entered an Order granting the Camp brothers' Petition For Writ Of Certiorari.

(C) STATEMENT OF FACTS RELEVANT TO THE ISSUE PRESENTED FOR REVIEW.

Appellants Curly Camp and Howard Camp and Appellee Stokes owned adjoining tracts of land in Monroe County, Mississippi. Stokes filed a Complaint in Monroe County Chancery Court, alleging that Curley and Howard Camp, in contractual concert with Appellant Marty Tate, trespassed upon his land and wrongfully cut timber thereon, pursuant to § 95-5-10, Mississippi Code of 1972, as amended. The Camp brothers filed a Counter-Complaint, asking the Chancery Court to confirm their title to the land upon which the timber was cut and to adjudicate an old wire fence to be the proper boundary line between the parties' respective tracts of land.

The central issue at trial was the location of the boundary between the parties' respective tracts of land, and the resulting ownership of the property from which the timber was cut. After a trial upon the merits of the case the Chancery Court determined that the old wire fence was the true boundary line between the parties' respective tracts of land, as maintained by the Camp brothers, and denied Stokes' Complaint for relief for trespass and wrongful cutting of timber.

The Camp brothers subsequently filed a Motion to alter or amend the Judgment of the Chancery Court and to assess attorney's fees and expert witness fees as Court costs, pursuant to § 95-5-10(3), which Motion the Chancery Court denied. The Chancery Court entered an Amended Order and clarified that the reason for the denial of Camp brothers' Motion was that she was of the opinion that § 95-5-10(3), Mississippi Code of 1972, as amended, did not apply to a successful Defendant in a timber trespass case filed pursuant to this statute.

The Chancellor made it clear in her Amended Order that did she not exercise any discretion in assessing attorney fees and expert witness fees because she determined that the timber trespass statute did not apply to a successful Defendant in a timber trespass case. She held no hearing to determine the amount of expert witness fees and attorney fees for the same reason.

The Camp brothers then filed a Notice of Appeal to this Court of the Chancellor's Amended Order denying them attorney's fees and expert witness fees. On June 5, 2009 (before any briefs were filed with the Court of Appeals) the Court of Appeals entered an Order, Appendix "A" hereto, requesting that the Chancellor reconsider her previous Order finding that the Court lacked jurisdiction under § 95-5-10 to award attorney's fees and expert witness fees to the successful Defendants in this case. On July 1, 2009 the Chancellor rendered an Order Reconsidering Prior Trial Court Order Pursuant To The Order Of the Mississippi Court of Appeals Entered June 5, 2009, affirming her previous decision denying the Camp brothers attorney's fees and expert witness fees.

#### **IV. SUMMARY OF APPELLANTS' ARGUMENT**

WHETHER THE TRIAL COURT AND THE COURT OF APPEALS ERRED IN RULING THAT THE ALLOWANCE OF ATTORNEY FEES AND/OR EXPERT WITNESS FEES, AS PROVIDED BY § 95-5-10(3), MISSISSIPPI CODE OF 1972, AS AMENDED, DOES NOT APPLY TO A SUCCESSFUL DEFENDANT IN A TIMBER TRESPASS CASE FILED PURSUANT TO SAID STATUTE.



The statute under which Plaintiff Stokes' suit was filed and tried, § 95-5-10(3), Mississippi Code of 1972, as amended, states that "All reasonable expert witness fees and attorney's fee shall be assessed as Court costs in discretion of the Court." This statute does not state that "the successful Plaintiff's" witness fees and attorney's fees shall be assessed as Court costs. "All" means what it says; that the statute on its face applies to successful Defendants, as well as successful Plaintiffs.

Rule 54(d) of the Mississippi Rules of Civil Procedure provides that costs shall be allowed as a matter of course to the prevailing party, Defendants Camp brothers and Tate in this case.

## **V. APPELLANTS' ARGUMENT**

**ISSUE 1:      WHETHER THE TRIAL COURT ERRED IN RULING THAT THE ALLOWANCE OF ATTORNEY FEES AND/OR EXPERT WITNESS FEES, AS PROVIDED BY § 95-5-10(3), MISSISSIPPI CODE OF 1972, AS AMENDED, DOES NOT APPLY TO A SUCCESSFUL DEFENDANT IN A TIMBER TRESPASS CASE FILED PURSUANT TO SAID STATUTE.**

**(A) THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH THE PRIOR DECISION OF THE COURT OF APPEALS AND A PUBLISHED SUPREME COURT DECISION**

The Court of Appeals at ¶9 of its Opinion states that "When a statute is plain on its face, there is no room for statutory construction." Citing *Harrison v. State*, 800 So. 2d 1134, 1137 (¶12) (Miss. 2001). This case goes on to say that in addition, "[o]nly when a statute is unclear... should we look beyond the language of the statute in determining the Legislature's intent." *Id.* (citing *Kerr-McGee Chem. Corp. v. Buelow*, 670 So. 2d 12, 17 ( Miss. 1995)).

The Court of Appeals further cited the following language from *Autrey v. Parson*, 864 So. 2d 294, 295 (¶4) (Miss. Ct. App. 2003):

The primary rule of construction is to ascertain the intent of the [L]egislature from the statute as a whole and from the language used therein. Where the statute is plain and unambiguous there is no room for construction, but where it is ambiguous[,] the court, in determining the legislative intent, may look not only to the language used but also to its historical background, its subject matter, and the purposes and objects to be accomplished.

The Camp brothers completely agree with all of the foregoing cases as being the correct authority for statutory construction. The decision of the Chancellor and the Court of Appeals in this case is, however, diametrically opposite to and in conflict with the rule set out in these cases. § 95-5-10(3) states as follows:

- (3) All reasonable expert witness fees and attorney's fees shall be assessed as court costs in the discretion of the court.

This statute in question is unambiguous, is plain on its face and does not require any construction. The statute does not state that "the successful Plaintiff's witness fees and attorney's fees shall be assessed as court costs." The statute on its face applies to successful Defendants as well as successful Plaintiffs.

The Court of Appeals in its Opinion cites the case of *Stockstill v. Gammill*, 943 So. 2d 35, 50 (¶30) (Miss. 2006). The Court of Appeals, in quoting the Chancellor's ruling at ¶17 of her Order Reconsidering Prior Trial Court Order, stated as follows:

In the present case, the chancery court reasoned that "pursuant to the holding in *Stockstill*, section 95-5-10(3) does not *per se* mandate an award of attorney's fees to a successful plaintiff and should be viewed as an additional remedy the trial court may, in its discretion, award to the wronged landowner."

The Camp brothers would respectfully point out, and do strongly maintain, that this is not at all the ruling in *Stockstill*. *Stockstill* does not hold that an award of attorney fees is an additional remedy that the trial Court may in its discretion, award to the wronged land owner. Rather, *Stockstill* simply held, in affirming Chancellor's decision, that the Chancellor exercised his discretion, as permitted by the statute, in refusing to award a *successful litigant* expert

witness and attorney's fees, finding no abuse in the exercise of this discretion by the Chancellor. It is especially significant that the Supreme Court in *Stockstill* (at ¶30) did not refer to the denial by the Chancellor of attorney fees and expert witness fees to successful *Plaintiff*, but rather referred to this party as a successful *litigant*.

The Court of Appeals in its Opinion also cites as authority for its decision the case of *Teasley v. Buford*, 876 So. 2d 1070, 1074 (¶2) (Miss. Ct. App. 2004). The Court of Appeals in the case at bar affirmed the trial Court's decision that "Section 95-5-10 was inapplicable because the Plaintiff did not present sufficient evidence. *Id.* at 1081 (¶27)." Again, the Camp brothers respectfully submit that the Opinion of the Court of Appeals, and that of the Chancellor, are directly in conflict with what the Court of Appeals actually held in *Teasley v. Buford*. In *Teasley*, at ¶27, the Court stated that:

Because the statute upon which Teasley relied as the basis of his request for fees and expenses was ruled inapplicable based on insufficient evidence, the trial court did not abuse its discretion by denying Teasley's request for fees and expenses based on the statute.

*Teasley* actually held that the trial Court did exercise its discretion, as provided by § 95-5-10 (3), and denied the request for fees and expenses based on the statute. The case at bar is very different; the Court of Appeals affirmed the Chancellor's determination that she had no authority to exercise any discretion as to the award of attorney fees and expert witness fees.

§ (3) of the statute in question simply states that " [A]ll reasonable expert witness fees and attorney's fees shall be assessed as Court costs in the discretion of the Court." The word "all" means what it says, and needs no interpretation or construction. The attempts by the Court of Appeals and the Chancellor to try to read § (3) of the statute in context with the other two preceding paragraphs clearly depart from the "plain meaning rule" as cited in *Autrey v. Parson*,

*Id.* It simply defies logic that such a concise and clear statute would require all of this effort to read into and interpret it in context with the other two paragraphs of the statute.

This Court in the case of *Balouch v. State*, 938 So.2d 253 (Miss.2006) at ¶ 13 in addressing the issue of statutory construction and the meaning of the word “arrange” stated:

This definition is plain and unambiguous, “Where the language used by the legislature in a statute is plain and unambiguous and convey[s] [sic] a clear and definite meaning there is no occasion to resort to rules of statutory interpretation.” *Miss. Power Co. v. Jones*, 369 So.2d 1381, 1388 (Miss.1979)

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¶ 16 This Court must presume the words in the statute were “intended to convey their usual meaning absent some indication to the contrary.” *Wallace v. Town of Raleigh*, 815 So.2d 1302, 1208 (Miss.2002). There is nothing before this Court to indicate that the legislature intended anything other than the literal meaning of the words in this statute. The courts have no right to add anything to or take anything from a statute, where the language is plain and unambiguous. To do so would encroach upon the power of the Legislature. The courts have neither the authority to write into the statute something which the legislators did not write therein, nor to ingraft upon it any exception not included by them. *Id.*

Assuming for the sake of argument that § (3) of the statute should be read in context with the other two paragraphs to define its proper application, this analysis clearly leads back to the same conclusion; that all expert witness fees and attorney’s fees means those also of a successful Defendant.

§ (1) of the statute refers specifically to the party cutting trees and to the wronged landowner.

§ (2) of the statute addresses the rights of the wronged landowner and the penalties that may be imposed upon a Defendant wrongfully cutting trees.

Each of these paragraphs (1) (2) are specific in referring to what happens to a Plaintiff and a Defendant when a timber trespass case is filed and the Plaintiff prevails.

§ 3 of the statute is different from § (1) and § (2). This paragraph does not state what remedy is afforded a successful Plaintiff against an unsuccessful Defendant; rather, it simply states that it applies to “all.” If the legislature meant “a successful Plaintiff’s reasonable expert witness fees and attorney’s fees....” it could have easily said so. To the contrary, the statute uses the word “all,” which means what it says; the successful *litigant*.

(B) THIS CASE INVOLVES A FUNDAMENTAL ISSUE OF BROAD  
PUBLIC IMPORTANCE; SPECIFICALLY, THE  
INTERPRETATION OF A STATUTE THAT WOULD APPLY TO  
SIMILAR CASES IN THE FUTURE

This case is properly before the Supreme Court on Petition For Writ Of Certiorari for the same reason as in the case of *Balouch v. State*, 938 So.2d 253 (Miss.2006). In *Balouch*, as in the case at bar, the sole issue was whether the Court of Appeals erred in its interpretation of statutory language, an issue of first impression in *Balouch*, and also an issue of first impression in this case now before this honorable Court. As in *Balouch* ¶8, this matter is properly before this Court because the determination by the Court of Appeals was based on an erroneous interpretation of the plain language of a statute.

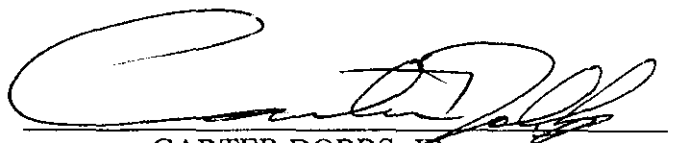
The issue in the case now before this Court, whether (¶3) of the timber trespass statute applies to a successful *litigant*, and not only to a successful *Plaintiff*, is important in the trial of all cases in the future when the result is in favor of the Defendant. It is particularly important that the Supreme Court rule on this issue because on May 28, 2009 the Court Appeals entered an Order requesting that the Chancellor reconsider her previous Order finding that the Court lacked discretion under § 95-5-10(3) to award attorney’s fees and expert fees to a successful Defendant. (Appendix “A” hereto) In compliance with this Order the Chancellor, on July 1, 2009, rendered an Order Reconsidering Prior Trial Court Order Pursuant To The Order Of The Mississippi Court Of Appeals Entered June 5, 2009. This second Order of the Chancellor actually amounted

to an additional, or *amicus*, brief in support of the Appellee's position, to which the Rules of Appellate Procedure promulgated by this Court did not provided the Camp brothers the opportunity to respond. The Chancellor quite properly complied with the Order of the Court of Appeals and entered an Order reconsidering her previous Order. However, in doing so she, certainly unintentionally, placed the Camp brothers in a posture of procedural disadvantage. They have had no opportunity to respond to the detailed conclusions of law contained in her 10 page Order of reconsideration. Upon this Court's request, the Camp brothers will submit a further Brief in support of their position in this case.

## VI. CONCLUSION

For the reasons set out above, Appellant Camp brothers request that this Court render a decision reversing the decision of the Chancellor and the Court of Appeals as to the assessment of expert witness fees and attorney's fees as costs, and remanding the case to the lower Court for a hearing as to the amount of expert witness fees and attorney's fees to be allowed to Appellants Camp brothers and Tate.

Respectfully submitted,



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# APPENDIX

Serial: 155388

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

No. 2008-CA-01076-COA

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

**FILED**

*Appellants*

JUN 05 2009

v.

SUPREME COURT CLERK

*CLINT STOKES*

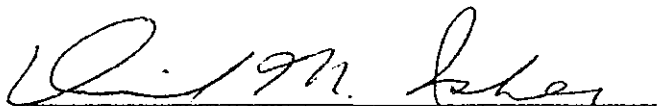
*Appellee*

ORDER

This matter came before the Court on appeal and the Court on its own motion requests that the chancellor reconsider the previous order finding that the court lack discretion under Mississippi Code Annotated § 95-5-10 to award attorney's fees and expert fees to the successful defendant, who is now the appellee in this appeal. In making this request, the Court is not suggesting any particular outcome, but requests that the chancellor shall enter an order within thirty (30) days of the date of the entry of this order.

THEREFORE IT IS ORDERED that the chancellor be, and hereby is, requested to reconsider the previous order denying attorney's fees and expert fees to the successful party in the case now on appeal. The court shall notify this Court of its decision within thirty (30) days of the date of the entry of this order.

SO ORDERED, this the 28<sup>th</sup> day of May, 2009.



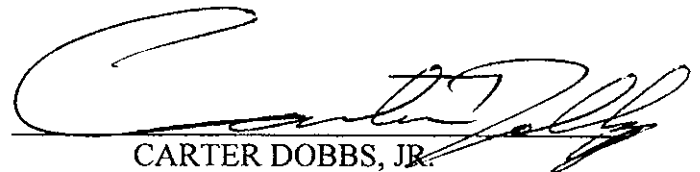
DAVID MICHAEL ISHEE, JUDGE

APPENDIX "A"



**CERTIFICATE OF SERVICE**

I, Carter Dobbs, Jr., attorney for the Appellants, do hereby certify that I have, on this the 23 day of April, 2010, mailed by United States mail, postage pre-paid, a true and correct copy of the above and foregoing Appellants' Supplemental Brief to the Appellee, Clint Stokes, at his usual mailing address of Post Office Box 2871, Columbus, Mississippi 39704 and to Honorable Jacqueline Estes Mask, trial Court Judge, at her usually mailing address of Post Office Box 7395, Tupelo, Mississippi 38802.

  
CARTER DOBBS, JR.