

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

**APPEAL NO.: 2008-CA-0252**

**IN THE ESTATE OF J. T. WATERS, DECEASED  
BARBARA WATERS, EXECUTRIX**

**BARBARA WATERS**

**APPELLANT**

**VS.**

**TIM WATERS, JOHN WATERS,  
LARRY WATERS, KEITH WATERS and  
BRENDA ADAMS**

**APPELLEES**

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**APPEAL FROM THE CHANCERY COURT  
OF COVINGTON COUNTY, MISSISSIPPI  
CAUSE NO.: 02-215**

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**ORAL ARGUMENTS NOT REQUESTED**

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**BRIEF OF APPELLEES,  
TIM WATERS, JOHN WATERS, LARRY WATERS,  
KEITH WATERS and BRENDA ADAMS**

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## CERTIFICATE OF INTERESTED PARTIES

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

1. Appellant: Barbara Waters
2. Counsel for the Appellant: David Shoemake, Esq., and A. Regnal Blackledge, Esq., Shoemake & Blackledge, PLLC
3. Appellees: Tim Waters, John Waters, Larry Waters, Keith Waters, and Brenda Adams
4. Counsel for the Appellees: Al Shiyou, Esq., Shiyou Law Firm
5. Trial Judge: Honorable Larry Buffington, Chancellor, Covington County, Mississippi



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Attorney for the  
Appellees, Tim Waters, John Waters,  
Larry Waters, Keith Waters, and Brenda  
Adams

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## **I. STATEMENT OF THE ISSUES**

1. Did the Chancery Court of Covington County, Mississippi err in failing to find that the Waters children violated the "no-contest" clause of J. T. Waters' Will?
2. Did the Chancery Court of Covington County, Mississippi err in awarding an interest in Southern Florists to the Waters' Estate?
3. Did the Chancery Court of Covington County, Mississippi err in not awarding certain items of personal property to Barbara Waters?
4. Did the Chancery Court of Covington County, Mississippi err in not awarding Barbara Waters' expenses?
5. Did the Chancery Court of Covington County, Mississippi err by not awarding Barbara Waters a widow's allowance?
6. Did the Chancery Court of Covington County, Mississippi err in creating a windfall for the Waters children by ordering all expenses of the Estate be paid from Barbara Waters' personal assets or assets devised to her through the Will?

## II. STATEMENT OF THE CASE

J. T. Waters signed his Last Will and Testament on September 24, 1993. Therein, he named his wife, Barbara Waters as Executrix. Mr. Waters died on June 27, 2002. The Last Will and Testament dated September 24, 1993 was admitted to probate in the Covington County, Mississippi Chancery Court. Barbara Waters, his wife, was appointed Executrix. (Appellant's R. at 10~22)

On October 1, 2005, the Executrix filed her First and Final Accounting and Petition for Probate of Will in Common Form and Closing of Estate. (Appellant's R. at 173). Tim Waters, John Waters, Larry Waters, and Brenda Adams (collectively "the Waters children") contested the First and Final Accounting, as well as having filed a Motion to Cite the Executrix for Contempt (Appellant's R. at 266) and the issues came on for trial on September 27, 2006 and November 9, 2006. The Chancery Court entered its Final Judgment Closing Estate, Adjudicating Heirs and Making Distributions Together With Rulings on Motion for Contempt on or about January 30, 2008. (Appellant's R. at 301).

On February 22, 2008, the Executrix filed a Motion for New Trial and/or Rehearing. On March 18, 2008, the Chancery Court indicated that it found several errors in its Final Judgment and that an Amended Judgment would be entered. This Amended Final Judgment was filed on September 4, 2008. (Appellant's R. at 327-331). The Chancery Court found in the Amended Final Judgment the following: 1) That the Waters children did not violate "no-contest" clause of J.T.'s Will; 2) That the Waters' Estate owned an interest in Southern Florists; 3) That Barbara was not to receive certain items of personal property left to her in J.T.'s Will; 4) That Barbara was not to be awarded expenses; and 5) That Barbara was not entitled to a widow's allowance. Barbara filed

a motion with the Chancery Court to rehear, amend, or grant a new trial (Appellant's R. 332-339) which the Chancery Court denied. (Appellant's R. 344)

### **III. SUMMARY OF THE ARGUMENT**

The Chancery Court should not have amended its judgment other than as it did. The Appellant's assertion that the Waters children, Appellees herein violated the "no-contest" clause in J.T.'s Will and forfeited their right to take under the Will is totally without merit as will be shown herein. Further, the Chancery Court had clear, convincing and substantial proof upon which to base its ruling adjudicating Southern Florists to be part of the Estate. The Chancellor properly ruled in his decision regarding expenses herein. The widow abandoned her bid for a widow's allowance. Finally, the decision of the Chancellor herein did not create a windfall for the Waters children, but rather properly applied the law in Mississippi as to the allocation of expenses in the administration of an estate.

### **IV. ARGUMENT**

As the Court is aware, the standard of review in a matter such as this is that an Appellate Court "will not disturb a Chancellor's findings of fact unless they are manifestly wrong, clearly erroneous, or not supported by substantial or credible evidence."

**1. Did the Chancery Court of Covington County, Mississippi err in failing to find that the Waters children violated the "no-contest" clause?**

The Waters children, the Appellees herein, move this Court to Dismiss this citation of error in that Barabra Waters, the Appellant, failed in her brief to cite any authority for her assignment of error, as required by this Honorable Court. Without waiver of this Motion to Dismiss, the Waters children, the Appellees herein would state the following:

Article XI of the Last Will and Testament of J.T. provides as follows:

Each and every benefit conferred by this Will is made on the condition precedent that the beneficiary thereof shall not contest this Will or any provision thereof. Should any beneficiary of this Will contest the validity thereof or any provision thereof or institute, or join in instituting any proceedings, individually or by a representative, to contest this Will or any provision thereof, then all of the benefits, gifts, bequests or devises provided herein for such beneficiary are hereby revoked, and such benefits, bequests, gifts and devises which such beneficiary would have received had such beneficiary or his or her representative, made no such contest or brought no such proceedings shall go to the remaining beneficiaries under the residuary clause hereof, other than such beneficiary and should all of the beneficiaries join in such contest or proceedings, then such benefits, bequests, gifts and devises shall go to the persons (other than those making such contest) who are nearest related to me by blood. (Appellant's R. at 22)

Barbara Waters, in her Appellant's brief asserts that "This "no-contest clause" was never referenced in the Chancery Court's Amended Final Judgment, but was brought to the Chancery Court's attention in Barbara's post trial motion. However, the Chancery Court denied the post-trial motion and never even referenced the "no-contest" clause. (R. at 327, 332, 344)." The matter was fully debated and discussed before the Chancellor during the in chambers presentation of the Motions and the Chancellor properly ruled on the Motion. Further, the Chancellor had previously ruled on this issue and had dismissed the same contention.

It is admitted by the Waters children, the Appellees herein, that they did seek to protect the assets of the estate by seeking judicial review of the actions of the Executrix. However, at no time has any of the Waters children, collectively or individually, sought to have any provision of the will of J. T. Waters deemed unenforceable or invalid.

In *Shackelford*, 912 So. 2d at 146, the supreme court noted the broad equitable powers of the chancellor in ensuring that an executor properly exercises his fiduciary powers in

never  
contested  
will



administering the estate:

According to Mississippi law, "one serving in the capacity of executor or administrator is an officer of the court and holds a fiduciary relationship to all parties having an interest in the estate." *Holloway*, 631 So. 2d at 133. Based on this relationship, Mississippi law provides a chancellor with broad equitable powers and encourages the imposition of regulatory measures which insure that an estate and the will of its owner are protected from fraud. It is therefore the distinct duty of a chancellor to hold those serving in positions of trust accountable for their administrative actions and, in this way, hold a fiduciary fully accountable for the property with which the fiduciary has been entrusted.

*Id.* at 147 (¶29). While *Shackelford* may not be directly on point with the present case, it clearly establishes the point that the Executrix of an estate is a fiduciary. As such, the heirs of an estate have the right to have the Chancellor review the actions of that fiduciary and to take whatever action deemed appropriate to ensure the protection of an estates assets.

In the case of *In the Matter of the Estate of Thomas*, 2009-MS-0729.327, the last will and testament of Ollie Thomas, the decedent therein, contained a *in terrorem clause* which is very similar to the *in terrorem* clause on the Waters will:

*If any Beneficiary hereunder shall protest the probate or validity of this Will or any provision thereof, or shall institute or join in (except as a party defendant) any proceeding to contest the validity of this Will or to prevent any provision thereof from being carried out in accordance with its terms (regardless of whether or not such proceedings are instituted in good faith and with probable cause), then all benefits provided for such Beneficiary are revoked and such benefits shall pass to the residuary Beneficiaries of this will (other than the persons joining in such contest) who are living at my death and who would have been distributees had I died intestate a resident of the State of Mississippi and had the person or persons contesting my will died immediately*

*before me. Each benefit conferred herein is made on the condition precedent that the Beneficiary shall accept and agree to all of the provisions of this will and the provisions of this Article are an essential part of each and every benefit.*

In *Thomas*, three of the heirs of the estate contested the administration of the estate. In the ruling on this issue, the chancellor concluded that the purpose of the above-quoted clause was "to discourage the beneficiaries from *contesting the Will*, not challenging the *administration* of the Estate or the Trusts -- which is what Carol, Lynda[,] and Cathy's Complaint does, and the Court *so finds*." As the chancellor further noted, "[t]o hold otherwise, would mean that an Executor and/or a Trustee is free to spend a decedent's money *without accountability* to anyone. ."

This Court found no error with the Chancellor's "holding, and (*further stated*) we find that the chancellor properly refused to apply the in terrorem clause. Therefore, this issue is without merit.

Likewise, in this case, the Court should find this issue without merit and dismiss this claim. Therefore the ruling of the Chancellor was **not** manifestly wrong, clearly erroneous, and was supported by substantial evidence.

**2. Did the Chancery Court of Covington County, Mississippi err in awarding an interest in Southern Florists to the Waters' Estate?**

The First and Final Accounting was filed on October 17, 2005, and thereafter, on or about October 28, 2005, the Waters children filed a Petition to Include Assets into Estate. In this Petition, the Waters children claimed that the business known as "Southern Florist" should be included as an asset of the Estate. (R. at 173, 232).

**A. Statute of limitations.**

In her brief, Barbara Waters, the Executrix and Appellant, states, in part:

*coming in  
argument*

*The corporation, Southern Florist, Inc., was sold to Barbara on January 23, 1996. (T.T. at 18, 19, 128). Barbara was the sole and only shareholder.*

*(Ex. 5). J.T. Waters knew that Barbara was the sole and only shareholder, and knew Barbara operated Southern Florists as her business. (T.T. at 17, 18, 25, 26, 36, 37). J.T. died on June 27, 2002. Between January 23, 1996, and the date of his death, J.T. never objected to or filed a claim that Barbara had taken, wrongfully used, or converted an asset that belonged to him. The statute of limitations on any action J.T. may believed he had against Barbara was, at its longest, three (3) years. Miss. Code Ann. 15-1-49. It was over six (6) years between the time Barbara received the florist and J.T.'s death. The statute of limitations had long expired before J.T.'s death June 27, 2002.*

The Waters children, the Appellees herein, take issue with the positions stated by Barbara Waters above. The statements are clearly against the overwhelming weight of the evidence herein. First, the corporation, Southern Florist, Inc. was not sold to Barbara Harris, as she stated. Emily Beach and Nancy Todd filed articles of Incorporation with the Mississippi Secretary of State on March 8, 1996. (Trial Ex. 5) The Articles of Incorporation reflect that 1,000 shares of common stock was authorized. The Articles of Incorporation do not reflect in whose name the stock was or would be issued. The only place on the Articles of Incorporation where Barbara Waters' name appears is that of the registered agent. It is well established law that stock in a corporation is evidence of an ownership right of the holder of a stock certificate in the corporation which issued the certificate. *18 Am. Jur. 2d 488*. Further, Mississippi law states that

all stock must be fully and actually paid for. *Alford v. Laurel Imp. Co.* 38 So. 548. Herein, Ms Beach and Ms Todd attempted to create a corporation. However, Ms Waters testified that "He paid for it" (He being J. T. Waters) (T.T., page 66, line 8) Further, Ms Waters testified that there was no minute book, stock register, stock certificate or corporate seal. (T.T., page 66, line 15, et. seq.) She further testified that there were never any corporate meetings. (T.T., page 66 and 67) Further, the evidence before the Court is that J. T. Waters paid for the business. J. T. Waters and Barbara Waters, jointly and with full knowledge of both parties, advertised the business as being owned by Barbara and Johnny (J. T.) Waters. (T.T., page 60, line 27, and continuing through page 62) (Trial Exhibit 13). Since the record clearly establishes that no stock certificate was ever issued, how could Barbara Waters be the sole stockholder. Further, she testified that she did not have any stock...that John never gave it to me. (T.T., page 67, line 12) For there to be a valid issuance of the stock, there must be a delivery of the stock. *18 Am.Jur. 2d 488.*

Mrs. Waters also takes the stance that J. T. loaned her the money to buy the company. (T.T., page 66, line 8 and page 48, line 13) She further asserts that she "repaid the loan" to J. T. by paying him approximately \$1,000.00 a month for six years. Her evidence of the repayment is a series of checks which she claims to be the method by which she repaid J. T. (Trial Exhibit 12) In reviewing these checks, it is noted that each and every check is made payable to Barbara Waters. None of the checks reflect that they were for the repayment of a loan, (This statement admitted to by Mrs. Waters in her testimony (T.T., page 53 and 54, line 29 and 1). Further, Mrs. Waters admits that the checks she alleges to be for the repayment of this "loan to her from J.T." went into a joint account. She further admits that she {emphasis added} paid income tax

and social security taxes on these checks which were allegedly issued to J. T. in repayment of the loan. Mrs. Waters even admitted that the money she claims to "repaid" to J. T. was "our money, Al" (T.T., page 56, line 18). She further admits that there were no "legal documents that indicate it was his" (T.T., page 56, line 29 and page 57, line 1). Further, the record reflects that Mrs. Waters admitted that the checks for Southern Florist did not reflect it being incorporated (T.T., page 57, lines 12 through 24).

In the case at hand, the Chancellor heard the evidence and made his ruling. The Court's review of a chancellor's judgment is limited. *In re Estate of Carter v. Shackelford*, 912 So. 2d 138, 143 (¶18) (Miss. 2005) (citing *Miller v. Pannell*, 815 So. 2d 1117, 1119 (¶9) (Miss. 2002)). Generally, this Court will not disturb a chancellor's findings unless the chancellor was manifestly wrong, clearly erroneous, or applied the wrong legal standard. *Id.* The Chancellor herein heard the evidence before him and made a decision that the claims of the Waters children, the Appellees herein, were not barred by the statute of limitations. J. T. Waters never had any reason to assert his ownership of Southern Florist by court action, because he had no reason to believe he did not own it. The heirs of Mr. Waters, upon learning that Mrs. Waters was asserting her sole ownership of Southern Florist took appropriate legal action to ensure the business was included among the assets of J. T. Waters by filing their Petition to include the florist in the estate. This action was taken well within three years of their having knowledge of the position being asserted by Barbara Waters.

**B. The business and property were solely owned by Barbara**

The Appellees agree that the building was purchased by Barbara Waters by a Warranty

Deed by Margaret Daniels to Barbara Waters on or about May 11, 1999. (Ex. 4). The evidence produced at trial did not reflect that the business was operated solely by Barbara. The evidence showed that J.T. participated in the operation in that he delivered flowers for the florist at times.

The Waters children introduced old newspaper advertisements from 1996 for Southern Florists referencing that the owners were J.T. and Barbara. Further, the Appellees readopt their arguments set forth above and respectfully represent that the ruling of the Chancellor was not manifestly wrong, clearly erroneous, and was supported by substantial evidence.

**3. Did the Chancery Court of Covington County, Mississippi err in not awarding certain items of personal property to Barbara Waters?**

The Waters children, the Appellees herein, move this Court to Dismiss this citation of error in that Barabra Waters, the Appellant, failed in her brief to cite any authority for her assignment of error, as required by the rules of this Honorable Court. Without waiver of this Motion to Dismiss, the Waters children, the Appellees herein would state in response to this assignment of error.

**A. The household items.**

Article VI of the Last Will and Testament of J.T. devised and bequeathed to Barbara Waters, his widow, as follows:

If my wife, Barbara Waters, should survive me then she is to inherit all of the household furnishings and appliances in our residence, and further is to have the right to live in said residence for a period of two years from the date of my death. Upon her vacating said residence then same is to be sold and the proceeds of said sale to be divided among my natural children, or the survivors of same, in equal shares, per capita. (R. at 22)

Woods, 2:56

As itemized in the First and Final Account, the furnishings and appliances referred to in

Article VI are as follows:

One Old Pump Organ (belongs to Linda Smith);  
Navy Blue Print Love Seat, Couch and Chair;  
One Small Mauve lift chair;  
One Metal Filing Cabinet;  
Various lamps, clocks and pictures;  
Three large recliners and One Glider;  
One big TV, one table with four chairs, various wall accessories, lamps, tables;  
Large antique buffet in foyer;  
Table with eight chairs, china cabinet and small table;  
One three piece King size bedroom suite, & small tv;  
Office furniture, computer, desk with chair, table, bookcase, lamp, and filing cabinet;  
One three piece King size bedroom suite, lamps, tables;  
One picnic table, one bench and one swing on porch; and  
One deep freeze. (R. at 178). *look at this*

There is no evidence produced, at the trial or otherwise, proving that Barbara did not receive the items set forth above. Thus, there can be no error made by the Chancellor herein when he was not asked to rule on these items. Further, the Executrix is specifically charged with ensuring the terms of the Last Will and Testament are carried out. If she failed to so do, then she has no one but herself to blame.

#### **B. The cattle and farm equipment.**

Article IV of the Last Will and Testament of J.T. devised and bequeathed as follows:

Should she survive me, then my wife, Barbara Waters, is to inherit the cattle and all farm equipment, except for the equipment on our farm titled to Waters Trucking, Inc., subject to any liens, mortgages or Deeds of Trust outstanding on our jointly owned farm, and the cattle and equipment on same. She is to have the right to purchase, within one year of my death, at its appraised fair market value, any piece of equipment used on said farm titled in the name of Waters Trucking, Inc. In the event that she does not purchase same, said equipment is to be considered a part of, and included in, the assets of Waters Trucking, Inc., upon sale of same.

The Executrix asserts that the following cattle and farm equipment was not titled Waters

Trucking, Inc.:

55 head of cross breed cattle;

2 Charlaio Bulls;

30 calves;

One (1) 2955 J. D. Tractor Serial #L02955T741475 with 148 Loader with 7 bucket;

One (1) 2950 J. D. Tractor Serial #L02950T557886 with 7' loader;

One Gehl RB 1870 Hay Baler Serial #16665;

One 24 foot Circle W/stock trailer 1991 model, Serial # PTLRJ9737P;

One 6 foot box blade;

One 10 foot Mode 310 Sidewinder Pasture Mower;

One 7 foot House Pasture Mower;

One 21 foot Six Row Do-All;

One 12 feet International Disc Model 470;

One 8 foot GMD Hay Cutter with Caddy Model 2001;

One Dayton Generator 25 KW PTO 3-Pt. Hitch; and

One 150 Gallon Pasture & Livestock Sprayer. (R. at 178).

Again, there is no evidence produced, at the trial or otherwise, proving that Barbara did not receive the items set forth above. Thus, there can be no error made by the Chancellor herein when he was not asked to rule on these items. Further, the Executrix is specifically charged with ensuring the terms of the Last Will and Testament are carried out. If she failed to so do, then she has no one but herself to blame. Since the Executrix has in fact received all of these assets unto herself, the Appellees fail to understand what the issue is she is trying to assert. Therefore, this Court should render this assertion of error as moot.

**4. Did the Chancery Court of Covington County, Mississippi err in not awarding Barbara Waters' expenses?**

The Waters children, the Appellees herein, move this Court to Dismiss this citation of error in that Barabra Waters, the Appellant, failed in her brief to cite any authority for her



assignment of error, as required by the rules of this Honorable Court. Without waiver of this Motion to Dismiss, the Waters children, the Appellees herein state "One of the most fundamental principles of the administration of intestate estates in Mississippi is the rule that a decedent's personal property is the primary source of funds from which to pay his debts and the expenses of administration, and that a decedent's real property may be utilized only after his personalty has been exhausted". **Miss. Code Ann. Section 91-7-91** and *Barnes v. Rogers*, 206 Miss. 887, 41 So.2d 58 (1949). Real property descends directly to the heirs at law to enjoy until the contingency arises when it may be needed to pay debts. **Miss. Code Ann. Section 91-7-91** and *Gift of Love*, 164 Miss. 442. While the Appellees concede that this estate is not an intestate estate, the will is silent as to from what portion of the estate expenses should be paid. Thus, the law set forth in *Barnes* and in *Gift of Love* should apply.

Further, **Miss. Code Ann. Section 91-7-91**, clearly sets forth:

The goods, chattels, personal estate, choses in action and money of the deceased, or which may have accrued to his estate after his death from the sale of property, real, personal or otherwise, and the rent of lands accruing during the year of his death, whether he died testate or intestate, shall be assets and shall stand chargeable with all the just debts, funeral expenses of the deceased, and the expenses of settling the estate. The lands of the testator or intestate shall also stand chargeable for the debts and such expenses over and above what the personal estate may be sufficient to pay, and may be subjected thereto in the manner hereinafter directed.

The Chancellor correctly applied the law of this state when he assessed the expenses of the administration of this estate against the personalty of the estate, ie., the cattle.

**5. Did the Chancery Court of Covington County, Mississippi err by not awarding Barbara Waters a widow's allowance?**

It is undisputed that Barbara Waters filed October 5, 2006, a Motion for Widow's Allowance pursuant to the provisions of Miss. Code Ann. §91-7-135. (R. at 281).

However, during the trial of this matter on September 27, 2006 and November 9, 2006, the widow never asserted her claim for a widow's allowance. Even in her Motion for a New Trial and/or Rehearing filed February 8, 2008, the Executrix (whom is also the widow) did not raise this matter as an issue. Only upon this appeal did she raise the issue. The record is totally void of any evidence in support of a widow's allowance. There is no evidence in the record that Barbara Waters did not have a substantial separate Estate or that she was in any way qualified and entitled to a statutory widow's allowance. There is nothing in the record either which would support such a contention.

Further, it should be noted that exempt property (decedent's home) may not be sold to raise money for the year's allowance. Part of the money held by the Executrix is from the sale of the decedent's home which is exempt under Section 85-03-1 of the Mississippi Code of 1972, Ann.

Therefore the ruling of the Chancellor was not manifestly wrong, clearly erroneous, and not supported by substantial evidence and this citation of error should be dismissed.

**6. Did the Chancery Court of Covington County, Mississippi err in creating a windfall for the Waters children by ordering all expenses of the Estate be paid from Barbara Waters' personal assets or assets devised to her through the Will?**

The Waters children, the Appellees herein, move this Court to Dismiss this citation of

error in that Barabra Waters, the Appellant, failed in her brief to cite any authority for her assignment of error, as required by this Honorable Court. Without waiver of this Motion to Dismiss, the Waters children, the Appellees herein state "One of the most fundamental principles of the administration of intestate estates in Mississippi is the rule that a decedent's personal property is the primary source of funds from which to pay his debts and the expenses of administration, and that a decedent's real property may be utilized only after his personalty has been exhausted". **Miss. Code Ann. Section 91-7-91** and *Barnes v. Rogers*, 206 Miss. 887, 41 So.2d 58 (1949). Real property descends directly to the heirs at law to enjoy until the contingency arises when it may be needed to pay debts. **Miss. Code Ann. Section 91-7-91** and *Gift of Love*, 164 Miss. 442. While the Appellees concede that this estate is not an intestate estate, the will is silent as to from what portion of the estate expenses should be paid. Thus, the law set forth in *Barnes* and in *Gift of Love* should apply.

Further, **Miss. Code Ann. Section 91-7-91**, clearly sets forth:

The goods, chattels, personal estate, choses in action and money of the deceased, or which may have accrued to his estate after his death from the sale of property, real, personal or otherwise, and the rent of lands accruing during the year of his death, whether he died testate or intestate, shall be assets and shall stand chargeable with all the just debts, funeral expenses of the deceased, and the expenses of settling the estate. The lands of the testator or intestate shall also stand chargeable for the debts and such expenses over and above what the personal estate may be sufficient to pay, and may be subjected thereto in the manner hereinafter directed.

The Chancellor correctly applied the law of this state when he assessed the expenses of the administration of this estate against the personalty of the estate, ie., the cattle. Therefore, no windfall was created for the Waters children as asserted by the Executrix.

## V. CONCLUSION

The ruling of the Chancery Court of Covington County should stand, as entered. The ruling of the Chancery Court should not be found to be manifestly wrong, clearly erroneous, or not supported by substantial or credible evidence.


The Chancery Court of Covington County did not err in its Judgment as set forth herein and should not be reversed. Further this Court should not remand this matter and the appeal of the Appellant should be dismissed with all costs of Court and appeal assessed unto her.

RESPECTFULLY SUBMITTED this, the 22nd day of October, 2009.

**TIM WATERS, JOHN WATERS,  
LARRY WATERS, KEITH WATERS  
and BRENDA ADAMS**

BY: 

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**CERTIFICATE OF SERVICE**

I, AL SHIYOU, do hereby certify that I have on this 22nd day of October, 2009, by U.S.


Mail, postage pre-paid, mailed a correct copy of the above, foregoing Brief of Appellees, to:

Hon. Kathy Gillis  
Office of the Clerk  
Supreme Court of Mississippi  
P.O. Box 249  
Jackson, MS 39205-0249

Hon. Larry Buffington  
Chancellor  
Covington County Chancery Court  
P. O. Box 924  
Collins, MS 39428

Hon. David Shoemake  
Shoemake & Blackledge, PLLC  
Post Office Box 1678  
Collins, Mississippi 39428

SO CERTIFIED, this the 22nd day of October, 2009.

  
\_\_\_\_\_  
AL SHIYOU