IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

LATOYA MAPP, INDIVIDUALLY AND AS EXECUTRIX OF THE LAST WILL AND TESTAMENT AND ESTATE OF WILL FRANK MAPP, JR., DONALD A. PUGH, SR., DARRYL MAPP, THE ESTATE OF WILL FRANK MAPP, JR., AND JOHN DOES 1-5 **APPELANTS**

V. **CASE NO. 2008-CA-02093**

MARILYN MAPP CHAMBERS, INDIVIDUALLY AND AS GUARDIAN OF VIRGINIA MAPP **APPELLEES**

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 Judges of the Court of Appeals may evaluate possible disqualification or recusal.

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   Chancery Court Judge
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2. **WHETHER THE COURT COMMITTED MANIFEST ERROR IN FINDING THAT MARILYN MAPP CHAMBERS DID NOT EXECUTE THE DEED IN QUESTION.**

STATEMENT OF THE CASE

On or about April 2, 2003, a quitclaim deed was filed with the Chancery Clerk of Scott County purporting to convey certain real estate owned and operated by Virginia and to Will Frank Mapp, Jr. Appellee, Marilyn Mapp Chambers, purported signature was affixed on a quitclaim deed and the alleged signature of her mother, Virginia Mapp, was either forged or obtained by one or more of the defendants at a time when they had knowledge that Virgina Mapp lacked the mental capacity to execute a deed. The deed in question was allegedly signed by the grantor on April 2, 2003. As a result of these occurrences, a Petition to Set Aside Fraudulent Conveyance of Real Estate was filed claiming fraudulent conveyance of the aforementioned real estate. (C.P. Vol. 1 p. 19). The trial court found that Ms. Virginia Mapp was not mentally competent to enter into any agreement regarding her financial affairs. In addition, the trial court found that Ms. Marilyn Mapp Chambers did not affix her signature to the said deed. It is from these findings that the Appellants bring their appeal alleging manifest errors in the lower court ruling.

STANDARD OF PROOF

There is a well known premise that the Court will reverse a chancellor *only* when he is manifestly wrong. *Hans v. Hans,* 482 So.2d 1117, 1119 (Miss.1986); *Duane v. Saltaformaggio,* 455 So.2d 753, 757 (Miss.1984) *emphasis added.* A chancellor's findings will not be disturbed unless he was manifestly wrong, clearly erroneous or an erroneous legal standard was applied. *Tinnin v. First United Bank of Miss.,* 570 So.2d 1193, 1194 (Miss.1990); *Bell v. Parker,* 563 So.2d 594, 596-97 (Miss.1990). Where there is substantial evidence to support his findings, this Court is without the authority to disturb his conclusions, although it might have found otherwise as an original matter. *In re Estate of Harris,* 539 So.2d 1040, 1043 (Miss.1989). Additionally, this court has found that where the chancellor has made no specific findings, "we will proceed on the assumption that he resolved all such fact issues in favor of the appellee." *Newsom v. Newsom,* 557 So.2d 511, 514 (Miss.1990). The chancellor's decision must be upheld unless it is found to be contrary to the weight of the evidence or if it is manifestly wrong. *O.J. Stanton & Co. v. Mississippi State Highway Comm'n,* 370 So.2d 909, 911 (Miss.1979).

The Court accords great deference to the trial court and will not reverse a trial judge's factual findings regarding this issue "unless they appear clearly erroneous or against the overwhelming weight of the evidence." *Sewell v. State*, 721 So.2d 129, 136 (Miss. 1998) (*quoting Lockett v. State,* 517 So.2d 1346, 1350 (Miss.1987). The Supreme Court ought and generally will affirm trial court sitting without a jury on a question of fact unless, based on substantial evidence, the trial court is manifestly wrong. *Mullins v. Ratcliff,* 515 So. 2d 1183, 1189 (Miss 1987), citing *UHS-Qualicare, Inc. v. Gulf Coast Community Hospital, Inc.* (Miss. No. 56,389, dec. Aug. 26, 1987) (not yet reported); *Brown v. Williams, et al.,* 504 So.2d 1188, 1192 (Miss.1987); *Harkins v. Fletcher,* 499 So.2d 773, 775 (Miss.1986); *Dillon v. Dillon,* 498 So.2d 328, 329 (Miss.1986);

SUMMARY OF THE ARGUMENT

The Appellee, Marilyn Mapp Chambers, has illustrated clearly for this Court the numerous reasons why the chancellor's findings must not be disturbed. The evidence presented at trial supported the assertion that Ms. Virginia Mapp lacked the mental capacity to enter into any formal agreement or contract, that Ms. Mapp Chambers did not sign or affix her signature relinquishing her rights to any interest she may have had to the property in question and that Mr. Frank Mapp, Jr. acted in bad faith in his attempt to execute said deed. The Appellants in this case failed to provide sufficient evidence which would corroborate the assertion that Ms. Virginia Mapp was competent to sign the deed. The judge, sitting as finder of fact, is in the best position to evaluate the testimony and determine what portions of the testimony of any witness it will accept or reject. Since the chancellor, in this instance, had the ability to evaluate the witnesses and the proof presented during the trial, his findings should not be disturbed in the absence of manifest error. Additionally, the evidence admitted, taken as a whole, clearly meets the burden of proof necessary to support the basis of the lower court's finding. Weighing all evidence provided, the lower court did not commit manifest error in its ruling, thus the appeal brought forth by the Appellants should be denied in its entirety.

ARGUMENT

THERE WAS SUBSTANTIAL EVIDENCE CONSISTENT WITH THE LOWER COURT'S FINDINGS AND THUS THE LOWER COURT'S CONCLUSIONS SHOULD NOT BE DISTURBED

In the instant case there was clear and convincing evidence that supported the chancellor's decision. The evidence reflected that Ms. Virginia Mapp had consistently since 2001 been seeing Dr. George E. Wilkerson regarding her progressing condition. Tr. 28. According to the testimony, Dr. Wilkerson began seeing Ms. Mapp based on a referral because the previous doctor was concerned with Ms. Mapp's significant problems her memory and wanted her to be seen by a neurologist. Tr. at 29. Upon examination by Dr. Wilkerson, he found that Ms. Mapp was suffering from "dementia of the Alzheimer's type, that she had hypertension and that she had other etiologies also adding" to her problems. Tr. 32. Dr. Wilkerson went on to explain that Alzheimer's is a disease of memory loss and causes difficulty with cognition (the ability to think, to reason and the ability to manage one's emotions as it progresses. Dr. Wilkerson testified that Alzheimer's disease is a relentlessly progressive irreversible disease. Tr. 33.

In January of 2002, Dr. Wilkerson believed that Ms. Mapp's condition had significantly progressed and advised Ms. Marilyn Mapp Chambers that he believed a conservatorship should be established to protect Ms. Virginia Mapp's assets. Dr. Wilkerson believed at that time that Ms. Virginia Mapp was no longer capable of taking care of her own affairs. According to Dr. Wilkson "she was not able to manage financial issues and her memory had gotten bad and she was having problems understanding what was going on around her. Tr. 60. The conservatorship

was however, not established at that time. In April of 2003, just days after Ms. Virginia Mapp had supposedly agreed to the deed at issue, she was hospitalized as a result "of this mental infliction and infirmity on a geriatric psychiatric unit." Tr. 61. Dr. Wilkerson stated that at that time Ms. Virginia Mapp was still having problems with her dementia. He stated that she was overtly psychotic, i.e, "delusional and out of contact with reality, very agitated, not sleeping." Tr. 62. The doctor testified that in his opinion and based on any degree reasonable and medical and probability, Ms. Mapp was continuing to suffer from a mental infliction and impairment. Tr. 64-5.

These statements made by the physician that treated Ms. Mapp since 2001, far contradicts statements made by the Appellants that Ms. Mapp was mentally competent at the time it is stated that she signed the deed at issue. Because there was a history of medically diagnosed mental incompetence, then the burden shifts to the Appellants to prove that Ms. Virginia Mapp, if she in fact signed the deed, was competent at the time of the signing. *Lambert v. Powell*, 24 So.2d 773, 776 (Miss. 1946).

Further, coupled with the fact that the Appellants had the burden of showing Ms. Virginia Mapp was competent, Ms. Marilyn Mapp Chambers insists that she did not sign the deed. (R.E., Vol. 1, 117). Even the notary who notarized the deed, signed an affidavit supporting that Ms. Marilyn Mapp Chambers was not present at the time she notarized the said document. (R.E. Vol 1, 123). She later went back and retracted that statement. Thus, if the court does not give her affidavit any weight then her credibility regarding the truth is questionable at the least. It should be noted that at the time, the notary was an employee at the funeral home, which was solely operated by Mr. Frank Mapp, Jr. While the handwriting expert, Frank Hicks, believed that it was probably Ms. Chamber's signature, he could not rule out the "possibility of a carefully executed

manipulation or simulation," of the signature of Ms. Mapp Chambers. (R.E. Vol 2, 252). The handwriting expert even went so far as to acknowledge that the signature "falls short of a "virtually certain degree of confidence," that Ms. Mapp Chambers was the signor of the deed. (R.E. Vol. 2, 252-3). Never once did the handwriting expert unequivocally state with absolute certainty that it was in fact Ms. Mapp Chambers who affixed her signature to the deed in question. The handwriting expert also stated that he had not been furnished with enough copies. He stated he normally likes to compare at least ten samples. *Id.* Given this lack of affirmation, the lower found the handwriting analysis "weak" at best citing that he'd witnessed him testify on numerous occasions. (Tr. 287, Line 13-22). As the trier of fact in this instance, the chancellor was allowed to give the expert's opinion the weight he deemed proper.

Thus, it is apparent that given the amount of evidence presented to show that Ms. Virginia Mapp lacked the mental capacity to understand what she was doing, the chancellor did not commit manifest error in finding that Ms. Virginia Mapp did not have the required mental competency to execute the deed in question. Likewise, the lower court committed no error in finding that Ms. Marilyn Mapp Chambers did not sign the deed and that if Ms. Mapp Chambers' signature was affixed to the deed, it could have been done as a result of her signature being copied and pasted to the document. The Appellants in this case failed to provide sufficient evidence which would corroborate the assertion that Ms. Virginia Mapp was competent to sign the deed. Thus, weighing all evidence, the lower court did not commit manifest error in its ruling.

I. WHETHER THE LOWER COURT COMMITTED MANIFEST ERROR IN FINDING THAT MS. VIRGINIA MAPP DID NOT POSESS THE REQUIRED MENTAL CAPACITY TO UNDERSTAND THE NATURE OF HER ACTIONS WHEN SHE PURPORTEDLY SIGNED THE DEED IN QUESTION

LOWER COURT DID NOT COMMITT MANIFEST ERROR IN FINDING THAT MS. VIRGINIA MAPP DID NOT POSSESS THE REQUIRED MENTAL CAPACITY TO UNDERSTAND THE NATURE OF HER ACTIONS WHEN SHE PURPORTEDLY SIGNED THE DEED IN QUESTION

Generally, heirs who seek to have a deed set aside on the ground of grantor's mental incapacity have the burden of proving the grantor was mentally incapacitated to make the deed on the date of its execution, *although* the burden shifts if the grantor had been shown to be habitually insane or mentally incapacitated for any continuous period such as would raise a presumption that he was mentally incapacitated at the time of execution. *Lambert v. Powell*, 24 So.2d 773, 776 (Miss. 1946). The case in question is quite similar to *Williams v. Wilson,* 335 So.2d 110 (Miss 1976). In that case, the court was of the opinion that the testimony established beyond question that Willie Ester Williams was generally and habitually insane and incapable of looking after her affairs from the time of her commitment to Whitfield on July 12, 1968, through her examination and treatment by Dr. Arnold in Detroit. Moreover, the purchaser of the property, Woodson Wilson, was put on notice that she was probably suffering from a mental disorder. The attorney who examined the title to the property for Wilson testified that he found Willie Ester Williams had been committed some few years prior to that time to Whitfield; and, that he brought this to Mr. Wilson's attention and asked him about her competency. He said that he realized that something like this could come up in the future. Under the circumstances, it was the duty of the purchaser to make an investigation into the competency of Willie Ester Williams, and, failing to do so, he bought the property at his peril. *Williams* at 112. This case also fits exactly within the holding of *Richetts v. Jolliff*, 62 Miss. 440 (1884) where it was said:

"Sanity is presumed until the contrary appears, and the burden of proof is on the party alleging insanity to prove it; *but* when a person is shown to have been generally or habitually

insane at any particular period, that condition is presumed to continue, and whoever relies on a lucid interval to support a contract subsequently made with such a lunatic must prove it and show sanity and competence at the time the contract was made." *Ricketts* citing 1 *Greenl.Ev., ss* 42, 81; *Attorney-General v. Parnther*, 3 *Bro.Chan.* 368. And a lucid interval is not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the partly soundly to judge of the act. *Ricketts* at 443. The evidence in support of a lucid interval, after derangement has been established, should be as strong and demonstrative of such fact as when the object of the proof is to show insanity, and it ought to go to the state and habit of the person, and not to the accidental interview of any individual or to the degree of self-possession in any particular act. *Williams* at 112 citing Attorney-General v. Parnther, 3 Bro.Chan. 368; *Hall v. Warner*, 9 Ves. 605.

In *Williams*, like the case sub judice, the only evidence tending to show that Willie Estate Williams was in a 'lucid interval' at the time she executed the deed came from three witnesses who observed her briefly. *Williams* at 113. Accordingly, the Court found the testimony of the three witnesses fell far short of the rule announced in *Ricketts v. Jolliff*, supra, and restated in *Polk v. Martin*, 116 So.2d 107 (1928), that 'proof of a lucid interval after derangement of the mind, adduced in support of a contract made in such interval, must be as strong and demonstrative as would be required to show insanity, and must go to the state and habit of the mind, and not merely to an accidental conversation, or behavior on a particular occasion.' The *Williams* court was of the opinion that the purchaser of the land, Woodson Wilson, wholly failed to meet his burden of proving that Willie Ester Williams was in a 'lucid interval' and was competent at the time she executed the deed, and that the chancellor was manifestly wrong in his finding.

In the case at hand, according to the testimony, Dr. Wilkerson began seeing Ms. Mapp based on a referral because the previous doctor was concerned with the significant problems pertaining to Ms. Mapp's memory and wanted her to be seen by a neurologist. Tr. 29. Upon examination by Dr. Wilkerson, he found that Ms. Mapp was suffering from "dementia of the Alzheimer's type, that she had hypertension and that she had other etiologies also adding" to her problems. Tr. 32. Dr. Wilkerson went on to explain that Alzheimer's is a disease of memory loss and causes difficulty with cognition (the ability to think, to reason and the ability to manage one's emotions as it progresses. Dr. Wilkerson, testified that over time, Ms. Virginia Mapp's condition progressively worsened to a point where she was no longer able to attend to her finances. Not only did Dr. Wilkerson believe that Ms. Virginia Mapp was and had been incompetent for a number of years, the record reflects that other doctors had also signed affidavits based on their independent evaluations of Ms. Virginia Mapp, also stating that she lacked mental competence as it related to her ability to properly manage her affairs. (R.E. Vol. 1, 119, 122). Dr. Wilkerson, Ms. Virginia Mapp's treating physician, has no monetary interest in testifying with regard to Ms. Virginia Mapp's mental competency. The Appellants would like the Court to believe that just seven days after Ms. Virginia Mapp was seen and treated by Dr. Wilkerson, she was perfect, taking money, answering the telephone and running a business. However, just one week prior to her supposedly signing the deed at issue, Dr. Wilkerson found her to be incompetent with evidence of psychosis, taking antipsychotic medication and presenting cognitive abilities consistent with Alzheimer's and dementia. (Tr. 61 and Tr. 281, Line 1-13).

The Appellants offered testimony only from laypersons that said that during the time that Virginia Mapp supposedly signed the deed, they'd in fact had brief conversations with Ms.

Virginia Mapp. However, these brief conversations do not meet the *Ricketts* standard and thus is inefficient to prove that Ms. Virginia Mapp had experienced a lucid moment such that would allow her to understand her actions at the time the deed in question was signed.

Further, it appears based on the evidence presented, that Mr. Frank Mapp, Jr., in executing the deed at issue, acted in bad faith. *Murray v. Laird, 446 So.2d 575, 578-79 (Miss. 1987),* suggests five factors that ought be considered in determining whether the grantee/beneficiary has acted in good faith. These are, (a) determination of the identity of the initiating party in seeking preparation of the instrument, (b) the place of the execution of the instrument and in whose presence, (c) what consideration and fee were paid, if any, and (d) by whom paid, and (e) the secrecy and openness given the execution of an instrument.

Not only is Ms. Virginia Mapp's competency in question, but also, Ms. Marilyn Mapp Chambers has stated that she in fact did not sign or affix her name to the deed. Ms. Mapp Chambers' Affidavit clearly states that she never relinquished any interest or agreed to trade her in interest in the aforementioned property to Mr. Frank Mapp, Jr. (R.E. Vol. 1, 117, Exhibit B). This was in fact corroborated by Ms. Josie Gammage, who signed an affidavit stating that Ms. Mapp Chambers was not present at the time she notarized the Deed, although she later retracted that story. (R.E. Vol. 1, 123). In fact, at the time of Ms. Gammage's deposition she was adamant that Ms. Marilyn Mapp Chambers was not in her presence when she notarized the deed. Tr. 98. By Ms. Gammage, pleading the Fifth, the Court took an adverse inference. (Tr. 292, Line 10-15). Thus, if Ms. Marilyn Mapp Chambers states that she did not affix her signature upon the deed and the notary admitted that the Ms. Marilyn Mapp Chambers was not present at the time the deed was notarized along with the fact that Ms. Marilyn Mapp Chambers had no

idea that this deed existed until Mr. Frank Mapp, Jr. was admitted into the, then one could infer that Mr. Frank Mapp, Jr. acted in bad faith in executing the deed.

In accordance with the first *Murray* factor, the facts suggest that Mr. Mapp was "the initiating party in seeking preparation of the deed." According to the testimony Mr. Mapp made a statement regarding Ms. Virginia Mapp signing over the deed in question. "On one particular day, during April of '03,Will F. Mapp, came to [Pamela Patrick], wearing his pajamas and his house shoes and gave her the keys to his car and said, "go pick up my mom.'" (Tr. 279, Lines 23-29) "Toby [Frank Mapp, Jr.], told her that his mother, Virginia Mapp, was going to sign over her rental property and her interest in the funeral home and that was not anything unusual." (Tr. 280, Lines 15). The testimony does not establish who in fact had the deed prepared although presumably it was Mr. Mapp, since Ms. Virginia Mapp was living with Ms. Marilyn Mapp Chambers at the time and according to much of the testimony was totally dependent on Ms. Marilyn Mapp Chambers.

The second factor is "the place of the execution of the instrument and in whose presence." *Murray* at 579. The deed was executed at the funeral home which was being run solely by Mr. Frank Mapp, Jr. In addition, it was notarized by an employee of said funeral home, who in her affidavit attested that she was "told to do so by her employee, Will Frank Mapp, Jr. (R.E. Vol. 1 at 123). Factors (c) and (d) concern consideration paid for the deed. The record does not reflect any monetary consideration for the deed. Neither does it reflect that Mr. Mapp provided any assistance or aid for Ms. Virginia Mapp that would provide reasonable consideration in this instance.

The last factor pertains to the secrecy surrounding the execution of the deed. *Murray* at 579. In the case at hand, essentially no one was aware of this deed until Mr. Mapp was admitted

into the hospital sometime in 2006. According to Ms. Mapp Chambers' testimony, she did not realize this deed even existed until her niece, who worked in the chancery clerk's office notified her that the deed had been filed with the clerk's office. (Tr. 117). It was at that time that Ms. Mapp Chambers began to investigate the deed. *Id.* This lack of knowledge on behalf of Ms. Mapp Chambers would go to show that Mr. Mapp did not want other family members to be aware of this supposed agreement.

The Appellants would like for the Court to overlook testimony of Ms. Virginia Mapp's treating physician, who had stated since 2002 that Ms. Mapp was incapable of managing her personal or business affairs according to the testimony. The Appellants would like the Court to instead consider those individuals who briefly observed Ms. Mapp from time to time who state that based on those brief assessments, Ms. Virginia Mapp was in fact in her sound mind at the time the deed was signed. The rule, however, is quite clear on this issue. The rule is that lay witnesses may only express an opinion as to the sanity or insanity of a person after they have detailed the facts and the circumstances upon which they base their opinion. *Polk v. Martin*, 116 So. 107, 107. The Court in *Polk* believed that the competency of an individual "was a question of fact for the court and further believed that they could not say that the chancellor was manifestly wrong in his decision. In the present instance not one witness testified regarding any lengthy observation of Ms. Mapp. However, what they could testify to was that as time went by, Ms. Mapp's frequency of visiting the funeral home dropped tremendously and that most of the time she was brought to the funeral home by her daughter, Marilyn Mapp Chambers due to her inability to drive.

II. WHETHER THE LOWER COURT COMMITTED MANIFEST ERROR IN FINDING THAT MARILYN MAPP CHAMBERS DID NOT EXECUTE THE DEED IN QUESTION

THE LOWER COURT DID NOT COMMITT MANIFEST ERROR IN FINDING THAT MARILY MAPP CHAMBERS DID NOT EXECUTE THE DEED IN QUESTION

It was well within the bounds of sound discretion for the court to allow the jury, in this case the trial judge, to weigh the probative value of the somewhat equivocal opinion. *U.S. v. Herrera*, 832 F.2d 833, 837 (N.C. 1987). A trial judge enjoys wide discretion with regard to the relevancy and admissibility of evidence. *Fisher v. State*, 690 So.2d 268, 274 (Miss. 1996). Ms. Marilyn Mapp has always consistently asserted that she never signed or affixed her signature to the deed in question. Not only does she assert she never signed the instrument, she also asserts that she knew nothing of the deed until her brother became ill. According to the evidence presented at trial, at the time this deed was supposedly executed, Ms. Mapp Chambers was a teacher in the Jackson Public School System, and was at work at that time. (Tr. 291, Line 28-29; Tr. 292, Lines 1-15). Ms. Josie Gammage the notary that notarized this deed, signed an affidavit that Ms. Mapp was not present at the time the deed was notarized. (R.E. Vol, 1, 123). The Appellants assert that Ms. Gammage does not remember; however, that assertion is called into question in that Ms. Gammage asserted that Ms. Marilyn Mapp was not present at that time in conjunction with the fact that she later asserted her Fifth Amendment right against self-incrimination during the trial. (Tr. 100, 101). Also notable was that at the time this instrument was notarized, Ms. Gammage was an employee of the funeral home, which was operated by Mr. Mapp. The Appellant also would like the Court to accept Latoya Mapp's assertion over Ms. Marilyn Mapp's assertion. The lower court however, decided based upon the witnesses demeanor and testimony that Ms. Mapp Chamber's testimony was more credible (Tr. 293, Lines

1-4). Finally, the handwriting expert could not unequivocally state that that was Ms. Mapp Chambers' signature. The chancellor, sitting as trier of fact in this instance, was allowed to weigh the handwriting expert's testimony as he deemed appropriate. In light of the fact that Ms. Mapp Chambers would be the best person to state whether it was her signature affixed to the deed along with the fact that the handwriting expert could not rule out that if it was in fact Ms. Mapp Chambers' signature, that she was not some kind of victim of fraud resulting from someone copying and pasting her signature to the document, the trial judge committed no manifest error in assessment of the testimony provided.

CONCLUSION

The Appellee, Marilyn Mapp Chambers, has illustrated clearly for this Court the numerous reasons why the chancellor's findings must not be disturbed. The judge, sitting as finder of fact, is in the best position to evaluate the testimony and determine what portions of the testimony of any witness it will accept or reject. Since the chancellor, in this instance, had the ability to evaluate the witnesses and the proof presented during the trial, his findings should not be disturbed in the absence of manifest error. Additionally, the evidence admitted, taken as a whole, clearly meets the burden of proof necessary to support the basis of the lower court's finding.

For the foregoing reasons, this Court should affirm the Final Judgment of the Trial Court signed on December 1, 2008 and filed with the Clerk of Scott County on December 1, 2008. Further, all costs of this appeal should be taxed to the appellant.

Respectfully submitted, this the 10th day of June, 2009.

MARILYN MAPP CHAMBERS, INDIVIDUALLY and as GENERAL GUARDIAN OF VIRGINIA MAPP,
APPELLEE

By: _____
JANESSA E. BLACKMON, ESQ.

CERTIFICATE OF SERVICE

I, Janessa E. Blackmon, hereby certify that I have this day caused to be mailed by United States mail, postage prepaid, a true and correct copy of the foregoing Appelle's Brief to the following persons:

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This the 10th day of June, 2009.

JANESSA E. BLACKMON