IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

DIANE M. GARTRELL,
LISA LEANN GARTRELL AVERSRUSH,
AND JODEY JON GARTRELL — APPELLANTS

VS. — CAUSE NO: 2008-IA-01410-SCT

M. KAY GARTRELL (A/K/A
KAY GARTRELL KIRSCHNER),
EXECUTRIX OF THE ESTATE OF
DOROTHY BRYAN GARTRELL — APPELLEE

BRIEF FOR APPELLANTS

APPEAL FROM THE DECISION OF THE
CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPPI

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ORAL ARGUMENT REQUESTED

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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 the case. These representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal.

Diane M. Gartrell, Lisa Leann(Gartrell) Aversrush,and Jodey Jon Gartrell	Appellants
M. Kay Gartrell	Appellee
John T. Lamar, Jr. & law firm of Lamar & Hannaford, P.A.	Attorney of Record for Appellants
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Honorable Mitchell Lundy, Jr.	Chancery Court Judge

Respectfully submitted,

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STATEMENT OF ISSUES

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ISSUE #2: WHETHER THE CHANCELLOR ERRED IN ALLOWING THE APPELLEE TO COLLATERALLY ATTACK A FINAL DECREE OF ADOPTION ENTERED TWENTY FIVE (25) YEARS AGO.

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STATEMENT OF CASE

A. NATURE OF CASE, COURSE OF PROCEEDINGS AND DISPOSITION IN THE COURT BELOW.

This appeal arises from an order rendered on July 15, 2008 and entered on July 29, 2008, as well as another order entered on August 12, 2008 in the Chancery Court of Desoto County, Mississippi granting the Appellee, M. Kay Gartrell, (hereinafter "Kay" or "Appellee"), summary judgment in regards to the determination of the heirs of the Estate of Dorothy Gartrell (hereinafter "Dorothy"). (R. 79-82). The Orders in question determined that the DeSoto County Chancery Court in the adoption of Jodey Jon Gartrell (hereinafter "Jodey") and Lisa LeAnn (Gartrell) Aversrush (hereinafter "Lisa") by William C. Gartrell, III (hereinafter "Willie") lacked jurisdiction and the adoptions were void *ab initio*. (R. 79-82).

The validity of the adoptions was made an issue in the Executrix's Amended Petition to Determine Heirs that was filed on November 22, 2005, and in the Executrix's Second Amended Petition for Final Determination of Heirs at Law on February 5, 2008. (R. 31-35, 43). In response to the Executrix's Second Amended Petition for Final Determination of Heirs at Law, Jodey and Lisa filed their Motion to Dismiss, Affirmative Defenses, Answer to Second Amended Petition for Final Determination of Heir at Law and Counter-Petition to Remove Executrix on May 5, 2008. (R. 44-63). On May 16, 2008, the Appellee filed her Response to Motion to Dismiss and

Counter-Motion for Summary Judgment for a Final Determination of Heirs. (R. 64-67). Jodey and Lisa responded to the Counter-motion for Summary Judgment on May 27, 2008. (R. 69-75).

B. STATEMENT OF THE FACTS

On November 15, 1984, the Chancery Court of Desoto County, Mississippi entered a final decree of adoption ordering, adjudging and decreeing that Jodey, born July 3, 1966, and Lisa, born June 12, 1968, be and are hereby adopted by Willie. (R. 76-78). The order specifically found that the Court had subject matter jurisdiction and personal jurisdiction over all of the parties, and that the natural mother, Diane Mae Weiss Gartrell (hereinafter "Diane"), joined in the petition. (R. 77).

On October 10, 2002, Willie departed this life testate. (R. 18). Willie was survived by his wife, Diane, two (2) natural children, William C. Gartrell, IV (hereinafter "Will") and Cynthia Ann (Gartrell) Finn (hereinafter "Cindy") and two (2) adopted children, Jodey and Lisa. (R. 18).

On January 12, 2003, Dorothy departed this life, leaving a Last Will and Testament in which the Appellee was appointed Executrix of the Estate. (R. 7-16). Dorothy left in part or entirely her Estate to her son, Willie, and daughter, Kay, in equal shares per stirpes. (R. 10). The Appellee filed her Petition for Probate of Will and Letters Testamentary on January 24, 2003. (R. 7-16).

On March 30, 2004, the Appellee, by and through counsel, filed

a Petition to Determine Heirs which stated "Petitioner believes that the only heirs-at-law of Dorothy Bryan Gartrell, Deceased, are her daughter, M. Kay Gartrell (a/k/a Kay Gartrell Kirschner) and her grandchildren, William C. Gartrell, IV, Cynthia Ann (Gartrell) Finn, Jodey Jon Gartrell, and Lisa LeAnn (Gartrell) Johnsey." (R. 17-20). Subsequently, on April 1, 8, and 15, 2004, Kay published a Summons by Publication in the Desoto Times which named herself, Will, Cindy, Jodey and Lisa as heirs-at-law of Dorothy. (R. 21). Cindy assigned her interest in Willie's and Dorothy's estates to the Appellee's law firm, Kirschner & Gartrell, P.C., by document filed with the Court on August 26, 2004. (R. 22-23). Will assigned his interest in Willie's and Dorothy's estates to the Appellee's law firm, Kirschner & Gartrell, P.C., by document filed with the Court on September 9, 2004. (R. 24-25).

On March 22, 2005, George Weiss (hereinafter "Weiss") attested that he was "aware of, and consented to, the adoption proceedings" wherein Willie adopted his children, Lisa and Jodey. (R. 26). Further, Weiss swore and subscribed that he did not now, nor has he ever, objected to the adoption of Jodey and Lisa by Willie. (R. 26). On February 5, 2008, a Corrected Affidavit of George Joseph Weiss was filed. (R. 40-42). The Corrected Affidavit recounted some of his statements from the original Affidavit, but affirmed the fact that he does not contest the adoption. (R. 42).

The case has previously come before the Mississippi Supreme Court on interlocutory appeal in cause no. 2005-IA-00747-SCT with

regards to the grant of a commission to take the out-of-state deposition of Weiss, who is the natural father of Lisa and Jodey. (R. 27). The Appellee subsequently filed an affidavit dated October 24, 2005 which waived the rights granted by the commission, withdrew the subpoena to take Weiss' deposition, stated that she had not made any determination of the heirs of her mother's estate, and attested that she had not mounted any challenge to the adoptions of Jodey or Lisa. (R. 28-30). As a result of this affidavit the interlocutory appeal was dismissed as moot on August 24, 2006. (R. 36-39).

However, on November 22, 2005, which was during the pendency of the interlocutory appeal, the Appellee filed her Amended Petition to Determine Heirs which sought to contest the adoption and remove Lisa and Jodey as heirs of Dorothy. (R. 31-35). Subsequently, the Appellee filed her Second Amended Petition for Final Determination of Heirs at Law on February 5, 2008, which challenged the adoptions on the basis of (1) lack of personal jurisdiction, (2) lack of subject matter jurisdiction, (3) Weiss' affidavits, (4) perpetration of fraud upon the Mississippi Court in 1984. (R. 43).

SUMMARY OF ARGUMENT

The DeSoto County Chancery Court in 1984 clearly had jurisdiction over the adoption of Jodey and Lisa based on the statutes in place at the time of the adoption and the specific findings enunciated in the Final Decree of Adoption. Further, the

only persons allowed to challenge the validity of an adoption are the natural parents of the adopted children, and the natural parent must bring the action within six (6) months of the adoption in order to avoid being time-barred. Therefore, the Appellee not only lacks standing to challenge the adoption, but the issue would also be time-barred since it is being brought twenty five (25) years after the adoption.

Moreover, any inquiry into the validity of an adoption finalized in 1984 would run counter to the principles of equity. The Court would be promoting a collateral attack of an issue which was resolved by a learned Chancellor after having heard and considered sworn testimony. Additionally, judicial and equitable estoppel preclude the Appellee from changing her position after inducing a change of position by the Appellants and this very Court coupled with the fact that she will receive a substantial benefit from her change of position.

As a result, the Supreme Court should reverse the Orders of the Chancery Court, declare Jodey and Lisa to be heirs-at-law of Dorothy, and award expenses and attorney's fees to the Appellants for the costs associated with this action, as well as any actions which would further the interest of justice.

ARGUMENT

A. STANDARD OF REVIEW

Summary judgment should be granted only if the pleadings, discovery materials, depositions, and affidavits show that there is

no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Miss. R. Civ. P. 56(c); *Taylor Machine Works, Inc. v. Great American Surplus Lines*, 635 So.2d 1357, 1361 (Miss. 1994). The evidence must be viewed in the light most favorable to the non-moving party. *Brown v. Credit Center, Inc.*, 444 So. 2d 358, 362 (Miss. 1983). When previously faced with the award of summary judgment by a Chancellor, Justice Hawkins of the Mississippi Supreme Court wisely recognized in *McMullan v. Geosouthern Energy Corporation,* 556 So.2d 1033, 1036 (Miss. 1990), as follows:

> "Summary judgments are quite useful and encouraged by this Court in appropriate cases. We do deferentially suggest, especially in chancery court actions, great care and caution in granting them when a hearing on the merits can in all likelihood be heard as expeditiously as the time consumed in applying for, resisting and ruling upon a motion for summary judgment. Had this case come to us upon a final decree rendered following a hearing on the merits, it is unlikely that it would have presented any problem. In the posture of summary judgment, however, we must give the plaintiffs the benefit of the doubt on the allegations of their complaint and affidavits. Even if we were to affirm this case on appeal, the summary judgment "short cut" would still prove to be the longest route."

Furthermore, Questions of law are reviewed under the de novo standard. *Department of Human Servs. v. Gaddis*, 730 So.2d 1116, 1117 (Miss. 1998). The Mississippi Supreme Court has the final say regarding interpretations of law. *State v. Bapt. Mem'l Hosp.-Golden Triangle*, 726 So.2d 554, 557 (Miss. 1998).

B. ISSUE #1: WHETHER THE DESOTO COUNTY CHANCERY COURT HAD JURISDICTION OVER THE ADOPTION IN 1984.

Subject matter jurisdiction has reference to the power and authority of a court to entertain a case at all. *American Fidelity Fire Insurance Co. v. Athens Stove Works, Inc.*, 481 So.2d 292, 296 (Miss. 1985). Ordinarily, the existence of that authority turns on the nature of the case, either by reference to the primary right asserted or the remedy or relief demanded. *Dye v. State Ex Rel. Hale*, 507 So.2d 332, 337 (Miss. 1987). Subject matter jurisdiction, of course, cannot be waived. *Goodman v. Rhodes*, 375 So.2d 991, 993 (Miss. 1979).

The appropriate code section in regards to subject matter jurisdiction for adoptions in the state of Mississippi is Section 93-17-3 of the Mississippi Code of 1972, annotated, as amended. In 1984, Section 93-17-3 of the Mississippi Code of 1972, annotated, as amended, stated as follows, to-wit:

> "Any person may be adopted in accordance with the provisions of this chapter in term time or in vacation by an unmarried adult or by a married person whose spouse joins in the petition provided that the petitioner or petitioners shall have resided in this state for ninety (90) days preceding the filing of the petition, unless the petitioner or petitioners, or one of them, be related to the child within the third degree according to civil law, in which case such restriction shall not apply. Such adoption shall be by sworn petition filed in the chancery court of the county in which the adopting petitioner or petitioners reside or in which the child to be adopted resides or was born, or was found when it was abandoned or deserted, or in which the home is located to which the child shall have been surrendered by a person authorized to so do. The petition shall be accompanied by a doctor's certificate showing the physical and mental condition of the child to be adopted and a sworn statement of all property, if any owned by the child. Should the doctor's certificate indicate any abnormal mental or physical condition or defect, such condition or

> defect shall not in the discretion of the chancellor bar the adoption of the child if the adopting parent or parents shall file an affidavit stating full and complete knowledge of such condition or defect and stating a desire to adopt the child, notwithstanding such condition or defect. The court shall have the power to change the name of the child as a part of the adoption proceedings. The word "child" herein shall be construed to refer to the person to be adopted, though an adult."

The Mississippi Supreme Court has previously faced the question of a collateral attack on an adoption decree on the basis of lack of jurisdiction by and through a pending estate in *Adams v. Adams*, 102 Miss. 259 (Miss. 1912). The Court in *Adams* found that the validity of adoptions, when questioned in collateral proceedings, depends very much upon the views of the court before which the question is presented respecting the character of the proceeding and of the statutes by which it is authorized. *Id.* at 85. Further, when a court has attained the dignity of a court of record, its jurisdiction and the rightfulness of its action are presumed. *Id.* To sustain an adoption, oral evidence may properly be received of supporting facts not disclosed from the record or writings evidencing the adoption. *Id.*

The statutory requirements for a Mississippi Chancery Court to assert subject matter jurisdiction over an adoption of a minor child in 1984 were: (1) that the petitioners and the child reside in the judicial district for at least ninety (90) days unless one of the petitioners is related to the child within the third degree, in which case the ninety (90) day requirement shall not apply. It has never been challenged that Jodey and Lisa were residing in

DeSoto County, Mississippi at the time of the adoption. In fact, the Chancellor found that Jodey, Lisa, Diane, and Willie had been residing in DeSoto County for more than ninety (90) days. (R. 76-78).

There was some confusion with the lower court in regards to the potential effect upon a court's ability to exercise subject matter jurisdiction over an adoption when there potentially existed a pending custody matter concerning the same children in another jurisdiction. The Mississippi Supreme Court has previously addressed the issue of jurisdiction in regards to a custody proceeding versus an adoption proceeding in the case of *In re: Petition of Beggiani*, 519 So.2d 1208 (Miss. 1988). The court in *Beggiani* recognized that adoption proceedings are entirely separate and distinct statutory proceedings neither connected with or controlled by the prior custody awards of another court. *Id.* at 1211. Custody and adoption are different subject matters, and pending custody actions do not exclude adoption proceedings in a separate court. *Id.* In this matter, no custody matter was pending in another jurisdiction due to the fact that no action had occurred in any custody proceeding concerning Jodey and Lisa within the five (5) years prior to the adoption proceeding.

Additionally, the defense of lack of personal jurisdiction is waived if it is not made by a motion under Rule 12 of the Mississippi Rules of Civil Procedure nor included in a responsive pleading or an amendment thereof. M.R.C.P. 12(h). Objections to

personal jurisdiction must be asserted timely or they will be held waived. *Jones v. Chandler*, 592 So.2d 966, 970 (Miss. 1991). The right to contest the court's jurisdiction based on some perceived problem with service may yet be lost after making an appearance in the case if the issues related to jurisdiction are not raised at the first opportunity. *Young v. Huron Smith Oil Co., Inc.*, 564 So.2d 36, 38-39 (Miss. 1990).

In the case at bar there exists a valid and existing order in which the learned chancellor found that the court had jurisdiction over the adoption based on the law as it existed at the time. (R. 76-78). This order was never appealed, challenged, or overturned, prior to the current challenges. Further, the natural father has never contested whether the court had personal jurisdiction. Incidentally, the natural father appeared in this cause of action and filed two (2) affidavits on separate occasions, both of which affirmed that he has not contested nor does he have any intention of contesting the adoptions. (R. 26, 40-42). Moreover, the facts of this case reveal that the Chancery Court of DeSoto County, Mississippi had jurisdiction throughout the pendency of the adoption proceedings based upon the applicable statutes as they existed at that time. Clearly, the court had jurisdiction over the adoption, or at the very least there exists a genuine issue of material fact in regards to subject matter jurisdiction and summary judgment was inappropriate.

C. ISSUE #2: WHETHER THE CHANCELLOR ERRED IN ALLOWING THE APPELLEE TO COLLATERALLY ATTACK A FINAL DECREE OF ADOPTION ENTERED TWENTY FIVE (25) YEARS AGO.

Under Mississippi law, only a natural parent has a statutory right, based on Miss. Code Ann. § 93-17-5, to object to an adoption. *In re: Estate of Reid*, 825 So.2d 1, 7 (Miss. 2002); *citing In re J.J.G.*, 736 So.2d 1037, 1040 (Miss. 1999). Further, the Mississippi legislature has established that "no action shall be brought to set aside any final decree of adoption, whether granted upon consent or personal process or upon process by publication, except within six (6) months of the entry thereof." Miss. Code Ann. § 93-17-15 (1994). The Mississippi legislature does allow a limited exception for an adoption proceedings to be set aside for jurisdictional defects and for failure to file and prosecute the same under the provisions of the chapter. Miss. Code Ann. § 93-17-17 (1994). As previously enunciated under Issue #1, there were no jurisdictional defects in the adoption.

An adoption gives rise to a new relationship between the adoptive parent and the children which is not subject to endless legal contests. *Humphrey v. Pannell*, 710 So.2d 392, 399-400 (Miss. 1998). Additionally, the Mississippi statutes are written in order to bring stability to the relationship between an adoptive parent and their children. *Id.* The adoption of children is sacred, and the finality of adoptions is of the utmost necessity. *Reid,* 825 So.2d at 7. Consequently, the very nature of adoption is to create a legally binding and unbreakable bond between the adoptive parent

and the adopted children. *J.E.B.*, 822 So.2d at 953. Due to these public policies, the Mississippi Supreme Court has looked with disfavor upon setting aside an adoption even before the six months has expired. *Id.*

However, the Mississippi Supreme Court in *Reid* found that an heir of a deceased person had standing to attack an adoption. In *Reid*, the Court was presented with extraordinary facts including an adult male, with a law degree, being adopted by an elderly woman to whom he had no relationship. The adult male in *Reid* also had the elderly woman execute a deed of her property to him while he was present, had her execute her will in his presence, had previously attempted to have her adopt him, and acted as her attorney. The Court allowed a challenge to this adoption because it was concocted and obtained by fraud and overreaching in its acquisition. *Reid*, 825 So.2d at 7.

The facts in the case at bar are far different from *Reid*. Willie was the step-father of Lisa and Jodey as a result of his marriage to their natural mother, Diane, prior to their adoption. (R. 76-78). He adopted Jodey and Lisa when they were 16 and 18, respectively. (R. 76-78). Willie adopted Jodey and Lisa in order to raise them as his natural children. Further, Weiss, Jodey and Lisa's natural father, has voluntarily waived any contest to the adoption. (R. 26, 40-42). There is no evidence of fraud or overreaching in this case. The only person with standing to challenge the adoption is Weiss, and Weiss has sworn on two (2)

separate occasions to the fact that he has not contested nor does he have any intention of contesting these adoptions. (R. 26, 40-42). Therefore, the executrix of the estate of Dorothy, has no standing to challenge the adoption of Lisa and Jodey.

Desecration of two of America's sacred principles, parental rights and adoption, would be promoted if a non-natural parent is allowed to collaterally attack the validity of a twenty five (25) year old adoption. Adoption is sacred and its finality of the utmost necessity. Further, the adoption occurred twenty five (25) years ago and a challenge at this point would run counter to the Mississippi statutes and public policy. Jodey and Lisa were raised by Willie as if they were his natural children, and treated Willie as their father until his untimely death. Equity requires that the Court protect these adopted children. Accordingly, the Court should find that the Appellee has no standing to challenge the adoption, that challenge to the adoption is time-barred, that the adoption is valid as a matter of law, and determine that Jodey and Lisa are heirs-at-law of Dorothy.

D. ISSUE #3: WHETHER THE PRINCIPLES OF EQUITY AND JUDICIAL ESTOPPEL PRECLUDE THE APPELLEE'S COLLATERAL ATTACK ON A TWENTY FIVE (25) YEAR OLD ADOPTION.

The doctrine of unclean hands provides that "he who comes into equity must come with clean hands." *Richardson v. Cornes*, 903 So.2d 51, 55 (Miss. 2005); *quoting Thigpen v. Kennedy*, 238 So.2d 744, 746 (Miss. 1970). The doctrine of unclean hands prevents a

complaining party from having the aid of a court of equity when her conduct with respect to the transaction in question has been characterized by willful inequity. *O'Neil v. O'Neil*, 551 So.2d 228, 233 (Miss. 1989). When it is evident that the unclean hands doctrine is applicable, the chancellor has a duty to apply the doctrine. *Richardson*, 903 So.2d at 55.

The Appellee asserted her belief that Lisa and Jodey were heirs-at-law of Willie on four (4) previous occasions. (R. 17-21). Lisa and Jodey were adopted by Willie twenty five (25) years ago. (R. 76-78). The Petition to Determine heirs and the Notice to Unknown Heirs recognized Jodey and Lisa as heirs-at-law of Willie and consequently Dorothy. (R. 17-21). For a Court to rule otherwise would run counter to any notion of justice and fair play. The Appellee's conduct clearly evidences willful inequity.

Moreover, judicial estoppel precludes a party from asserting a position, benefitting from that position, and then, when it becomes more convenient or profitable, retreating from that position later in litigation. *Richardson*, 903 So.2d at 56; *citing Dockins v. Allred*, 849 So.2d 151, 155 (Miss. 2003). Because of judicial estoppel, a party cannot assume a position at one stage of a proceeding and then take a contrary stand later in the same litigation. *Id.* Further, judicial estoppel is meant to prevent the misuse of the courts by inconsistent representations, in which litigants choose case by case what representations may do them the most good. *Roberts v. Roberts*, 866 So.2d 474, 483 (Miss. Ct. App.

2003). Candor and honesty with the chancellor are required from the onset of the litigation. *Richardson*, 903 So.2d 51 at 56.

The doctrine of equitable estoppel is based upon fundamental notions of justice and fair dealing. *O'Neil*, 551 So.2d at 232. There are two elements of equitable estoppel that must be satisfied: (1) the party has changed his position in reliance upon such conduct of another; and (2) the party has suffered detriment caused by his change of position in reliance upon such conduct. *PMZ Oil Co. v. Lucroy*, 449 So.2d 201, 206 (Miss. 1984). The court in *Lucroy* went on to state that "whenever in equity and good conscience persons ought to behave ethically toward one another the seeds for a successful employment of equitable estoppel have been sown." *Id.*

The Appellee asserted her belief that Jodey and Lisa were heirs-at-law of Willie on March 30, 2004 and again on April, 1, 8, and 15, 2004. (R. 17-21). The Appellee changed her position only after acquiring the interests of Cindy on August 26, 2004 and Will on September 9, 2004 to the estate of Dorothy and receiving a dismissal of the prior interlocutory appeal based primarily on her attestations to the court that she was not contesting the adoptions of Jodey and Lisa. (R. 22-25, 28-30, 36-39). Her change of position is clearly due to her potential for acquisition of a larger share of Dorothy's estate if the adoptions are void. This change is clearly detrimental to the interests of Jodey and Lisa after they, along with this very Court, changed their position in

regards to the prior interlocutory appeal. The new position took advantage of the reliance by Jodey, Lisa and this very Court upon her representation that she was not challenging the adoptions.

Should the Appellee be able to nullify the adoption of Lisa and Jodey, then she would obtain the right to the entire estate of Dorothy instead of the child's share to which she is currently entitled. The doctrine of judicial estoppel is designed to prevent this type of alteration in a party's position at a latter point in litigation. The Appellee is required to act with candor and honesty in her dealings with the Chancellor, and she has clearly violated this duty.

Further, the Appellee should not be allowed to change her position in regards to the heirs-at-law of Dorothy to the detriment of Jodey, Lisa and this very Court after inducing reliance upon her representation that she was not questioning the adoptions. The Appellee must act ethically and honestly towards Jodey, Lisa and this honorable Court.

Admittedly, the executrix is endowed with the task of ascertaining the heirs of the deceased. However, the issue of their adoption was adjudicated by a Chancellor's order, and the order stood for twenty five (25) years without challenge or objection from the natural father, who has since declared that has not objected to the adoptions nor does he intend to challenge the adoptions. (R. 26, 40-42, 76-78). The Appellee enters the Court with unclean hands as she has previously asserted a belief adverse

to her current challenge to the heirs-at-law of Dorothy. (R. 17-22, 28-30). Further, the Appellee is judicially and equitably estopped from changing her position in regards to the heirs-at-law of Dorothy after inducing the reliance of this Court, Jodey and Lisa. This honorable court should find that the Appellee is estopped from changing her position in regards to the heirs-at-law of Dorothy and determine that Jodey and Lisa are heirs -at-law of Dorothy.

CONCLUSION

Willie adopted Jodey and Lisa in 1984. The Desoto County Chancery Court had jurisdiction over the adoption in 1984. The order of the learned chancellor along with the language of the statute as it existed at the time clearly reveal this fact. The natural father has waived, by and through his affidavits to this court, his right to challenge the personal jurisdiction of the court over him during the adoption proceedings. Further, the Appellee does not have standing to challenge the adoption, and any challenge to the adoption is time-barred.

Moreover, a challenge to a twenty five (25) year old adoption would run counter to public policy and desecrate the American principles of parental rights and adoption. The Appellee comes before the Court with unclean hands as she is now asserting a position adverse to her previous pleadings. Judicial and equitable estoppel precludes a litigant from changing her position when a different position becomes more convenient or profitable after

inducing the reliance of an adverse party and this Honorable Court.

For these reasons, the Supreme Court should reverse the Orders of the Chancery Court, declare Jodey and Lisa to be heirs-at-law of Dorothy, and award expenses and attorney's fees to the Appellants for the costs associated with this action. Additionally, the Court should consider what other orders justice requires.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, David M. Slocum, Jr., attorney for Appellants, Diane M. Gartrell, Lisa LeAnn (Gartrell) Aversrush, and Jodey Jon Gartrell, do hereby certify that I have this day mailed, by United States mail, postage prepaid, a true and correct copy of the above and foregoing Brief for Appellees to:

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So certified, this the 24th day of March, 2009.

DAVID M. SLOCUM, JR.