

SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI
CASE NO. 2008-TS-01669
CHANCERY COURT CASE NO: 2003-0083

JULIA WALLS, ET AL

APPELLANT(S)

RT

VS

SHERMAN IVY

APPELLEE

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 this Court may evaluate possible disqualification or recusal.

PERSONS OR OTHER ENTITIES	CONNECTION AND INTEREST
1. Julia Walls, et al	Plaintiff/Appellant
2. Bennie L Jones, Jr	Attorney for Plaintiff/Appellant
3. Hon. Randolph Walker	Attorney for Sherman Ivy
4. Hon. Jim Davidson	Chancery Court Judge

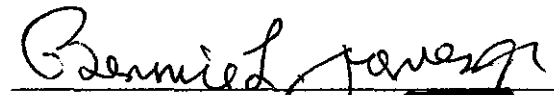

BENNIE L JONES, JR MSB# [REDACTED]
ATTORNEY FOR APPELLANT

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STATEMENT OF THE ISSUES

1. Whether this case should be remanded for further proceedings in order to allow appellants an opportunity to file a First Amended Complaint which would include additional material facts to make further triable issues.
2. Whether the statute of limitations should be tolled because neither the estate of Julia Holliday nor that of Christine Heard Ivy has been probated.

NATURE OF THE CASE AND COURSE OF PROCEEDINGS

This is an appeal of a Clay County Chancery Court case by the Appellants, Julia Walls, R.C. Holliday and Stella Coleman. Being aggrieved by the ruling of the Chancellor granting a Motion for Summary Judgment in favor of the Defendant the Appellants filed their Notice of Appeal.

ARGUMENT

STATEMENT OF ISSUE - 1

1. Whether this case should be remanded for further proceedings in order to allow appellants an opportunity to file a First Amended Complaint which would include additional material facts to make further triable issues

This case should be remanded back to Chancery Court in order for the two children of Christine Heard Ivy and Sherman Ivy to be added as necessary parties under MRCP 19 as well as any other necessary parties. Further the case should be remanded in order to allow the Plaintiffs/Appellants to plead concealed fraud with particularity as required by MRCP 9(b)

There is no way for the casual observer to determine where the purported property lines of Sherman Ivy and Christine Ivy's purported property start and stop; because the six acre tract was carved out of the property of the overall estate of Julia Holliday. R. pages 24 - 26.

Therefore there was no way for Julia Walls et al to determine whether the purported Sherman Ivy and Christine Heard Ivy property consisted of six acres or one acre by looking at the location of the house of Sherman and Christine Ivy because it appears to be blended into the estate property of Julia Holliday. *Id p. 24-26*

Based on the above and foregoing the Plaintiffs should be allowed to cure the alleged defects in the Complaint which would justify a trial/hearing of the case on the merits.

STATEMENT OF ISSUE - 2

2. Whether the statute of limitations should be tolled because neither the estate of Julia Holliday nor that of Christine Heard Ivy has been probated.

The Julia Holliday Estate was never probated nor as well has the Christine Heard Ivy estate been probated. Ivy Brief pages 2 and 3.

The six acre parcel that was purportedly conveyed to Christine Heard Ivy and Sherman Ivy was purportedly conveyed to them as tenants in common. *Ivy Brief p.3*. Therefore their two children have an alleged interest in the property.

The statute of limitations should be tolled in both estates because neither the estate of Julia Holliday nor that of Christine Heard Ivy has been probated. *MCA § 91-7-151*.

Nor for the above reasons the doctrines of laches and/or waiver should be applicable in that case.

CONCLUSION

The Plaintiffs herein would respectfully request that the court overturn the Chancellor's ruling granting Defendants Motion For Summary Judgment for the reasons that there are indeed genuine issues of material fact to be resolved in the case. For example, (1) Whether there was indeed concealed fraud 2) Whether the signatures were indeed forged. 3) How the one (1) acre/six (6) acre issue concerning the conveyance came about. 4) Whether due diligence was exercised or not exercised among others. 5) Further the issue of concealed fraud is a factual issue which cannot be separated from the issues concerning the statute of limitations.

Further the Plaintiffs would respectfully request that this Honorable Court remand this case back to the Chancery Court of Clay County, Mississippi for further development. Particularly to allow the Plaintiffs an opportunity to file a First Amended Complaint.

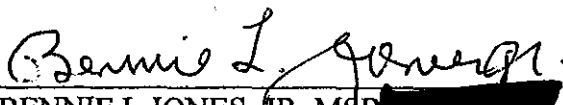

Moreover there is another issue dealing with the statute of limitations, that is the statute of limitations should be tolled because neither the estate of Julia Holliday nor that of Christine Heard Ivy was probated. *MCA § 91-7-151*.

Therefore, the decision of the Chancery Court Judge should be reversed.

This the 16th day of November, 2009.

Respectfully submitted,
JULIA WALLS, et al APPELLANTS

BY:


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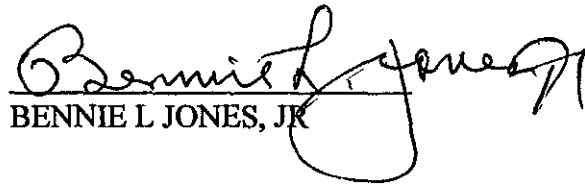
CERTIFICATE OF SERVICE

I, Bennie L. Jones, Jr, Attorney for Julia Walls, et al, do hereby certify that I have this day sent via U.S. Mail, postage prepaid, a true and correct copy of the Julia Walls et al's Reply Brief to the following:

Hon. Randolph Walker
Attorney at Law
P O Box 1492
Corinth, Ms 38835

Hon. Jim Davidson
Chancery Court Judge
P O Box 684
Columbus, Ms 39703

So certified on this the 16th day of November, 2009.


BENNIE L JONES, JR

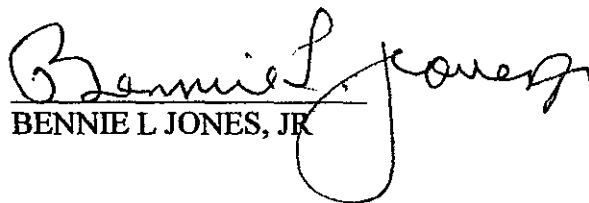
CERTIFICATE OF FILING

I, Bennie L. Jones, Jr, Attorney for Julia Walls, et al do hereby certify that I have this day filed by U.S. mail, first class, postage prepaid, and/or via commercial carrier, the original and three copies of the Julia Walls, et al's Reply Brief with the Clerk of the Mississippi Supreme Court for the purpose of filing said Reply Brief and copies, with the Clerk's office:

They were delivered to:

Ms. Betty Sephton
Clerk of the Supreme Court of Mississippi
P O Box 249
450 High Street
Jackson, Ms 39205

So certified on this the 16th day of November, 2009.


BENNIE L JONES, JR