

IN THE SUPREME COURT 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,

APPELLANTS

V.

CASE NO. 2008-TS-02093

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

APPELLEES

"REPLY BRIEF OF APPELLANT DONALD A. PUGH, JR."

(ORAL ARGUMENT NOT REQUESTED)

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INTRODUCTION

Appellee, hereinafter collectively referred to as "Chambers", have submitted a "Brief" which has raised an issue on Appeal that was not addressed in lower Court and is not properly before this Court for argument. Chambers cites *Murray v. Laird*, 446 So.2d 575, (Miss. 1987), for the issue of lack of good faith on the part of Will F. Mapp, Jr. Good faith regarding the deed at issue was never an issue raised in the lower Court, in the pleadings, arguments or any other portion of the record in this case. Appellee should not be allowed to argue this issue on appeal.

REPLY TO CHAMBERS ARGUMENT REGARDING BAD FAITH

Chambers, argues on page 11 of their Brief that *Murray v. Laird*, 446 So.2d 575, (Miss. 1987) applies in this case. This is the first time this issue has been raised in any of the pleadings, answers, discovery, or arguments before the lower Court and should and should be stricken. *CIG Contractors, Inc. vs. Mississippi State Bldg. Com'n* 510 So.2d 510 (Miss. 1987); *Allgood v. Allgood*, 473 So.2d 416 (Miss. 1985); *Howell v. May*, 983 So.2d 313 (Miss. App. 2007) where daughter's siblings waiver their appellant argument that Chancellor erred when he failed to set aside enter vi vois gift from mother to daughters before mother's death, where Chancellor failed

to address the enter vi vois gift, and siblings failed to request special finding by the Chancellor also citing Miss. R. of Civ. Pro. 52(a). Further, *Murray*, supra, deals with undue influence. No where in the records was there any allegation of undue influence by anyone over Virginia Mapp or Marilyn Mapp Chambers. As stated by the lower Court in rendering it's bench opinion we are dealing with the mental capacity on the part of Virginia Mapp and forgery in effect, on the part of Marilyn Mapp Chambers. (Trial Transcript 260; 20-22).

CONCLUSION

The portion of Chambers, Appellee's, Brief dealing with bad faith or undue influence should be stricken because it was never raised before the lower Court. Further, the Appellee's argument of burden shifting has no application in this case as there was no allegation of undue influence.

Respectfully submitted,



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CERTIFICATE OF SERVICE I, Rance N. Ulmer, do hereby certify that I have this day, June 24, 2009, mailed, postage prepaid, a true and correct copy of the Reply Brief of Appellant,


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