IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JUSTIN WALTON **APPELLANT** R+

versus **CASE NO. G-2009-CA-00136-COA**

JOHN WALTON and
KENNETH WALTON **APPELLEES**

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following list of 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.

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Respectfully submitted this the 28th day of October, 2009.

John P. Scanlon

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REPLY BRIEF OF APPELLANT

This case can be summarized at its simplest as follows: the Defendant uncles of Plaintiff Justin Walton intentionally circumvented Justin's interests in the land at issue, and had their parents' assets conveyed to themselves before Justin -- under state law -- was old enough to have been on notice and before he was old enough to be responsible to bring an action on his own behalf to protect his rights.

It bears repeating that there are at least two (2) different deeds purporting to convey an interest in land which are the subjects of disputes between the parties. The deeds purported to convey property of Edward Lee Walton and Jacqueline L. Hudson either to Defendant John Walton or to both of the Defendants. Both deeds occurred after the death of Edward Lee's and Jacqueline's son George, and both deeds cut out George's son, Plaintiff Justin, who was an heir-at-law to both of his grandparents Edward Lee Walton and Jacqueline L. Hudson, from receiving anything. As previously stated, the first, executed on December 12, 1989, is the subject of a separate, but related action. (R. 15 -17.) That action is currently pending on appeal either to this Court or the Mississippi Supreme Court. The second deed, executed on August 7, 1997, is the subject of the case at bar. (R. 3-4.) Eventual consolidation of these two cases may be appropriate.

Much of the argument proffered by the Appellees in their Brief can be best disposed of by referring to Justin Walton's initial Brief of Appellant. However, some issues raised in the Brief of Appellees merit brief reply discussion below. For the reasons contained herein, and in his initial Brief of Appellant, Justin Walton now requests this Court overturn the lower court's dismissal of this case, and remand the matter back to the trial court for further proceedings.

REBUTTAL ARGUMENT

I. STANDARD OF REVIEW

There is no dispute in this matter regarding the Standard of Review for the Rule 11 sanctions imposed by the trial court. However, the Standard of Review for the Motion to Dismiss granted by the trial court appears to be a subject of debate in this appeal.

The Standard of Review as cited in the initial Brief of Appellant is the proper standard. "When considering a motion to dismiss, the allegations in the complaint must be taken as true, and the motion should not be granted unless it appears beyond a reasonable doubt that the plaintiff will be unable to prove any set of facts in support of his claim." *Harris* v. *Miss. Valley State Univ.,* 873 So. 2d 970, 988(¶ 54) (Miss. 2004) (citing *TM* v. *Noblitt,* 650 So. 2d 1340, 1342 (Miss. 1995)). Appellees attempt to introduce the summary judgment standard of review as the appropriate standard for this Court, despite the fact that the pleading the Appellees filed with the lower court - the only pleading filed by the Appellees in fact - was clearly a Motion to Dismiss. On the surface, the difference is immaterial, as both standards of review are de novo. However, Appellees wish that this Court must find that there is no genuine issue of material fact, and that Appellees are due judgment as a matter of law, taking into account "depositions, answers to interrogatories and admissions on file, together with affidavits . . .. " (Brief of Appellees, 6) (quoting *Duckworth* v. *Warren,* 10 So. 3d 433, 436 (Miss. 2009)). This is an impossibility in this case, however, as no affidavits or written discovery have been filed. That is

in fact one of the primary flaws with the disposition of the case; Plaintiff should have been given adequate opportunity to conduct discovery. However, Defendants truncated that road by filing their Motion to Dismiss.

In short, Defendants chose to file a Motion to Dismiss, and not a Motion for Summary Judgment, but now wish to employ a summary judgment standard of review. Defendants wish for this Court to determine that the trial court considered matters outside the pleadings to make its ruling, and to sidestep the standard that "allegations in the complaint must be taken as true." *Harris,* 873 So. 2d at 988. The Defendants cannot have their proverbial cake and eat it, too. No matters outside the pleadings were considered by the trial court, as there is nothing else in the record aside from the pleadings. There have been no depositions and no written discovery. The exhibits referenced by Defendants were made part of the pleadings, and therefore should not constitute matters outside the pleadings. Thus, the Motion to Dismiss standard under *Harris* is the proper standard of review, and all allegations in the complaint must be taken as true by this Court.

However, should this Court nonetheless determine that the summary judgment standard of review is appropriate and employ that standard, then this Court should view the facts in a light most favorable to Justin Walton as the nonmoving party. *Davis* v. *City of Clarksdale,* 2009 WL 2960725, *2 (Miss. 2009) (citing *Grange Mut. Cas. Co.* v. *us. Fid. & Guar. Co.,* 853 So. 2d 1187, 1190 (Miss. 2003). Under that summary judgment standard, the evidence must be viewed in the light most favorable to the party against whom the motion has been made, Justin Walton here. *Dailey* v. *Methodist Medical Center,* 790 So. 2d 903, 907 (Miss. Ct. App. 2001) (citing *Evans* v. *Jackson Coca-Cola Bottling Co.,* 771 So. 2d 1006, 1008 (Miss. Ct. App. 2000)). Summary judgment would then be precluded if a genuine issue of material fact exists. *Davis,* 2009 WL 2960725 at *2.

To determine whether a genuine issue of material fact exists, the Mississippi Supreme Court has stated, "if one party swears to one version of events and the another party (sic) swears to a different version, summary judgment should be denied." *Robinson* v. *Cobb,* 763 So. 2d 883, 886 (Miss. 2000). This is precisely the case today. Viewing all evidence in favor of Justin Walton, the adverse parties swear to differing versions of events; thus, multiple genuine issues of material fact exist and this Court should reverse and remand for further proceedings.

II. JUSTIN WALTON HAD STANDING AS GEORGE'S SOLE HEIR.

Appellees argue that Appellant Justin Walton had no interest in the property in question and thus does not have standing to bring this suit, or this appeal. This assertion is not true, however.

As outlined in his initial brief to this Court, Plaintiff/Appellant Justin Walton is the son of George Walton, and grandson of Edward Lee Walton and Jacqueline L. Hudson Walton (George's parents), all of whom are now deceased and died intestate. (R. 1.) Edward Lee Walton and Jacqueline L. Hudson Walton had three (3) children as a result of their union: Justin's father George Walton, deceased; Johnnie Lee Walton ("John"); and Kenneth Paul Walton ("Ken"). (R. 1.) Thus, as Edward Lee Walton and Jacqueline L. Hudson both died intestate, their estates were to be divided equally into three parts, one for each of their three (3) children. Miss. Code Ann. § 91-1-3 (rev. 2004). However, of these three (3) sons, only John and Ken are still living. (R. 1.) John and Ken are the uncles of Plaintiff Justin, and the named Defendants in this action. (R. 1.) George Walton, who died unmarried in or about 1984, predeceased both of his parents, and was the father to Plaintiff/Appellant Justin Walton. Justin would have been a boy of only 5 or 6 years old at the time of his father's death.

Despite the death of George Walton, the estates of Edward Lee Walton and Jacqueline L. Hudson were nonetheless to be divided into three (3) equal parts under state law; Justin, as

the sole heir to George, would take his father's one-third (1/3) share of the estate of Jacqueline and the estate of Edward Lee. Mississippi Code Annotated Section 91-1-3 provides in part that:

> When any person shall die seized of any estate of inheritance in lands, tenements, and hereditaments not devised, the same shall descend to his or her children, and their descendants, in equal parts, the descendants of the deceased child or grandchild to take the share of the deceased parent in equal parts among them.

Miss. Code Ann. § 91-1-3. Thus, under Mississippi Code Annotated Section 91-1-3, Justin's grandparents' estate was to be divided equally into three parts: one-third (1/3) to go to John Walton, one-third (1/3) to go to Ken Walton, and one-third (1/3) to go *per stirpes* to Justin Walton as the sole surviving heir to his father George Walton, deceased. Defendants concede as much in their brief to this Court. (Brief of Appellees, 3.)

Additionally, it was the intention of Justin's grandparents Jacqueline and Edward Lee Walton for Justin to take *per stirpes* the share that would have otherwise gone to Justin's father George Walton. Justin's grandfather Edward Lee had personally and repeatedly expressed as much to Justin verbally. Defendants John and Ken, Justin's uncles, had also repeatedly expressed as much to Justin on various occasions, both before and after the deaths of Edward Lee and Jacqueline. These are facts Justin intends to prove if this Court remands this matter back to the trial court; these facts have not been proven yet as no discovery commenced before the trial court granted the Defendants' Motion.

However, Justin did not receive his father's one-third (1/3) interest in estate of Jacqueline and the estate of Edward Lee. This is because, before the deaths of Jacqueline and Edward Lee, the Defendants attempted to have the assets of Jacqueline and Edward Lee conveyed to themselves, without regard for their deceased brother George, or his son Justin, the Plaintiff in this matter. Therefore, through various deeds, Justin's interest in the matter was being conveyed

away and diminished down to nothing without any notice to Justin whatsoever. Justin had no notice of this or ability to prevent this, in no small part because the Defendants were leading Justin to believe that he would receive his deceased father's share of the estate, despite knowing that they had actually prevented that from ever happening by making the conveyances to themselves without regard to Justin's interest.

Thus, the above-quoted statute, section 91-1-3, makes clear that Justin did have standing to bring suit, and continues to have standing, as he was George's sole heir, a fact conceded by Appellees. This standing issue raised by Appellees in their Brief is therefore without merit. Accordingly, Justin Walton requests this Court reverse the decision of the trial court and remand the matter back to that court for further proceedings.

III. THE 'MINOR SAVINGS' PROVISION OF THE APPLICABLE STATUTE, SECTION 15-1-7, CONTROLS THE CASE AT BAR.

Appellees allege that Plaintiff is attempting to "long-shot" his way into an interest of his grandparents' estate. (Brief of Appellee, 8.) As previously stated, though, Appellees concede that Justin did in fact have an interest in his grandparents' estate as he as the sole heir to his father George's share of his grandparents' estate. (Brief of Appellee, 3.) Thus, whether Justin had an interest in the estate of his grandparents is actually not disputed. What is disputed is whether the estate contained any assets or anything of value. The Appellees contend that the estates were essentially empty by the time their parents, Justin's grandparents, died. Justin contends that the estates should not be considered empty because the amount of the assets disputed by Jacqueline L. Hudson herself at the time of the administration of Edward Lee's estate, and because the conveyances were in fact unlawful and should be set aside.

Appellees cite *Curry* v. *Turner,* 832 So. 2d 508, 514 (Miss. 2002), and *Arender* v. *Smith County Hosp.,* 431 So. 2d 491, 493 (Miss. 1983), for the proposition that when a parent brings

an action on behalf of his or her minor children, the minor savings statute, section 15-1-59, does not toll the statute of limitations time period in favor of those children. Justin Walton agrees that these cases can be read for that proposition of law, in cases where there is an adult also filing suit, and against whom the statute of limitations has unquestionably run, because there may be only one suit filed on the basis of wrongful death. However, this rule of law is entirely inapposite to the issue presently before this Court. Both of these cases are distinguishable from the present case, and neither controls the question presented to this Court in the case at bar.

In *Curry,* the widow and administratrix of her deceased husband's estate brought a wrongful death suit against her deceased husband's killer in the name of the estate and his beneficiaries. 832 So. 2d at 509. The widow later tried to amend the complaint to name several other defendants on different liability theories. *Id.* Later, the trial court granted the motion of the newly named defendants to dismiss suit on the grounds that the statute of limitations had run against the plaintiffs. *Id.* The Supreme Court upheld this dismissal, noting that because the statute of limitations ran against the non-minor widow plaintiff, and because there can only be one wrongful death suit brought on behalf of all beneficiaries, the statute of limitations therefore ran against all plaintiffs, even those who were minors at the time the suit was brought. *Id.* at 516-17. The entire analysis in *Curry* centers around questions of bringing suit under the wrongful death statute, especially "whether section 15-1-59 applies to minor children in wrongful death suits," which was complicated by the fact that the wrongful death statute has no separate savings provision of its own. *Id.* at 515-16.

The Mississippi Supreme Court in *Arender* v. *Smith County Hosp.,* 431 So. 2d 491, 493 (Miss. 1983), which the *Curry* Court discussed in detail, reached a similar holding, finding that section 15-1-59 does not apply to an action brought under the wrongful death statute, and that "[w]here one of the parties to a joint action is of age when the cause of action accrues, the

statute of limitations runs against all and when one is barred, all are barred." However, the *Arender* opinion was later overturned in part by *Thiroux* v. *Austin,* 749 So. 2d 1040, 1042 (Miss. 1999), where the Mississippi Supreme Court stated: "There is no question now that the savings clause, set out in § 15-1-59 of the Mississippi Code, applies to a wrongful death action." This Court recognized this reversal in *Anderson* v. *R & D Foods, Inc.,* 913 So. 2d 394 (Miss. Ct. App. 2005). Thus, not only is Appellees' cited precedent inapplicable, it is also no longer good law. In any event, even the *Arender* Court itself distinguished its holding from the case at bar, also noting, "we emphasize that this case only deals with the limitation of actions with respect to wrongful death cases (section 11-7-13), and *not to any other type of action." Id.* at 494 (emphasis added). Therefore, where the *Arender* Court referred to "actions of this character," the reference was clearly to wrongful death claims, and not to any other type of action. *Id.* at 493.

As previously stated, Appellees' offers of legal authority are inapplicable to this case for several reasons. First, this case does not deal with a parent bringing a suit on behalf of his or her minor children. Second, this case does not deal with the wrongful death statute in any way. Third, and perhaps most importantly, Plaintiff Justin Walton does not today raise section 15-1-59 as part of his defense, but instead section 15-1-7. Section 15-1-59, known as the "minor savings statute" does operate similarly to the pertinent provision of section 15-1-7. However, it is section 15-1-7, not section 15-1-59, which controls the question at issue today.

That having been said, this Court should take notice that any form of a minor savings statute serves to toll the applicable statute of limitations until that time when a minor reaches his majority, without regard to notice. "The purpose of the savings statute is to protect the legal rights of those who are unable to assert their own rights due to disability." *Rockwell v. Preferred Risk Mut. Ins. Co.,* 710 So. 2d 388, 391 (Miss. 1998). Discussing child support in

Wilson v. Wilson, 464 So. 2d 496, 499 (Miss. 1985), the Mississippi Supreme Court held, "To allow the statute of limitations to run during the disability of the minor, the very period through which the minor needs and is entitled to the support of his parents, would defy reason." The same reasoning applies today to section 15-1-7 and to the present case.

Justin Walton was born November 26, 1978, clearly making him a minor at the time the acts complained of took place. Thus, the portion of the applicable statute, section 15-1-7, which acts as a "minor savings" clause, protects his interests. There is no consideration of notice when a party is under the disability of minorship or infancy which would defeat the purpose of the statute; the purpose of the statute is to protect those who are minors, period, and not those who are minors and who may or may not have been on constructive notice. For these reasons, and all reasons and authority previously submitted to this Court in his initial Brief of Appellant, Justin Walton prays this Court reverse the trial court, and remand the matter for further proceedings.

IV. BECAUSE THE FACTS ARE NOT FULLY DEVELOPED, THIS CASE SHOULD BE REMANDED.

Defendants argue that the statue of limitations ran against Justin before any alleged acts of fraudulent concealment took place; however, this is far from the truth. Additionally, this is precisely a question that would be an appropriate topic of discovery.

The first acts of fraudulent concealment alleged would be those surrounding the questionable conveyances at issue, long before the direct representations that Justin's interests would be protected took place. Defendants knew of the existence of their nephew Justin, and his legal interest in their parents' estates; however, they obtained via a power of attorney the grant of all of their parents' land interests, intentionally leaving nothing for Justin. As previously stated, a presumption of undue influence exists in this case against Defendants as the existence of such a fiduciary or confidential relationship created by a power of attorney "gives rise to the

presumption of undue influence." *Arnold* v. *Dubose,* 740 So. 2d 979, 984 (Miss. Ct. App. 1999) (citing *Vega* v. *Estate of Mullen,* 583 So. 2d 1259, 1263 (Miss. 1991)). To overcome the presumption, the proponents of a general power of attorney and deed are required to present clear and convincing evidence that they acted in good faith, that the person granting the power of attorney "had full knowledge and deliberation of precisely what [he] was doing and its consequences when he executed the general power of attorney," and that the grantor "showed independent consent and action when she expressed her desire to convey her interest in the real property." *Id* (citing *Madden* v. *Rhodes,* 626 So. 2d 608, 619, 621 (Miss. 1993)). The record must be found to contain sufficient proof to satisfy each of the three prongs: good faith, full knowledge, and independent consent and action. *Arnold* v. *Dubose,* 740 So. 2d 979, 985 (Miss. Ct. App. 1999). The sparse record in this case can hardly be said to contain sufficient proof to satisfy any of these three prongs, and the Defendants have failed to present the clear and convincing evidence to this effect.

Beyond this presumption, Defendants also admit that Justin was not served with process during the opening or administration of the estate or designated as an heir at law. (Brief of Appellees, 3.) Appellees argue that simply because of the existence of Justin Walton's mother, Mary Lou Boles, the statute of limitations ran against Justin. The fact is that Justin's mother, because of personal difficulties of her own during that time, was unable to serve Justin's interests adequately; additionally, Justin was not in regular contact with her at that time, nor was he for years afterward. However, because of the brief time this case spent in the lower court, none of these issues was fleshed out in any way. All of these issues are in dispute and would be appropriate topics for discovery. However, Appellees offer no authority for their proposition that the existence of Justin's mother means the statute of limitations ran against him. It has long

been the rule in Mississippi that "[f]ailure to cite legal authority in support of an issue is a procedural bar on appeal." *Young* v. *State,* 919 So. 2d 1047, 1049 (Miss. Ct. App. 2005) (quoting *Carter* v. *Miss. Dept. Of Corrections,* 860 So.2d 1187, 1193 (Miss. 2003)). The actual controlling rule in this case, cited herein, above, is that from *Rockwell,* 710 So. 2d 388 at 391. and from *Wilson*, 464 So. 2d at 499 (Miss. 1985), which states that the purpose of a "minor savings" provision is to protect a minor, irrespective of any service upon Justin's mother. See also *Pollard v. Sherwin-Williams Co.*, 955 So. 2d 764, 770 (Miss. 2007); *United States Fid. & Guar. Co. v. Melson*, 809 So. 2d 647, 653 (Miss. 2002); *Rockwell vs. Preferred Risk Mut. Ins. Co.*, 710 So. 2d 388, 291 (Miss. 1998).

Appellees would also charge Justin Walton with due diligence when he was only a mere boy at the time the acts complained of took place. Because Justin was under the protection of the minor savings provision of section 15-1-7, as discussed above, he was not charged with due diligence or constructive notice. The purpose of that statue is to protect those under the disability of infancy. Nowhere in the language of the statute is there an exception clause such as Appellees would have this Court add to that statute today.

The Appellees also argue that Justin failed to exercise due diligence and thus, is barred from asserting fraudulent concealment. Justin agrees that this is the rule of law in Mississippi. However, the case on which Appellees rely for this contention, *Watts v. Horace Mann Life Ins. Co.*, 949 So. 2d 833 (Miss. Ct. App. 2006), is clearly distinguishable on the facts. In *Watts*, discovery was already complete when the motion for summary judgment there was brought. *Id.* at 835. In fact, this Court's analysis focused on deposition on the plaintiff there. *Id.* at 837. In the case at bar, no discovery has even begun; therefore, these issues are premature at this time and this matter must be remanded to the trial court for determination of these issues.

With respect to the contention that "the only interest [Plaintiffs grandmother] Jacqueline L. Hudson had at that time was a Life Estate," and that, were the deed to be judicially set aside, "no interest would pass to the Estate of Jacqueline L. Hudson," this is an example of a fact which is precisely what is at issue here. (R. 13.) The Appellees again raise this issue in their Brief of Appellees, stating that the only asset of the estate was a pick-up truck; however, this is only true if the conveyances Appellees made to themselves are determined to be valid. These are the very same conveyances which Walton challenges today. Thus, if the facts are viewed in a light most favorable to Justin Walton, the conveyances must be viewed as invalid, and therefore, it would be incorrect to say that the sole remaining asset of the estate was a pick-up truck.

Only for the first time in May of 2007, when Paul Hudson contacted Justin about the damage check from the mineral rights of the Pike County land and about the cutting and sale of timber from the real property of Edward Lee's estate, or possibly in the end of 2007 when Defendants offered the inferior tract of land, was Justin ever aware that a cause of action may have accrued in his favor against John and Ken. This was the first time Plaintiff Justin Walton could have discovered the fraud the Defendants perpetrated against him with reasonable diligence. This also tends to show that there was more to the estate than Appellees would have this Court believe, as issues surrounding mineral rights and damages from land in Pike County have arisen. Additionally, in her Response to the Petition for Final Account, to Discharge Administrators, and to Close Estate, filed on or about May 9, 1991, Jacqueline Walton herself conveyed in her pleadings that she was never advised by the petitioners there, John and Ken, that they had opened an estate for her husband, Edward Lee, that they did not make a true and correct representation of the assets of Edward Lee, and that they failed to make a proper

accounting. Thus, this question of what was properly in the estate was never reached and is far from settled.

Again, the primary issues not reached by the trial court – both legal and factual – include whether such conveyance made to oneself through the fiduciary role obtained via a power of attorney is permissible under the law, whether the estate of Jacqueline Hudson did in fact contain only a Life Estate and/or only a pick-up truck, and whether Justin was actually and properly entitled under the law to any of the assets of either the estate of Edward Lee Walton, or Jacqueline Hudson. None of these questions has been answered, or even litigated, in the lower court and thus, they are not presently issues on appeal, but must be reached in order for a court to issue an equitable ruling in this matter.

Thus, this argument of Appellees fails and this matter should be reversed and remanded for further proceedings in order for a court to make determinations on these questions left open.

V. JUSTIN WALTON DID NOT BRING THIS SUIT TO HARRAS THE DEFENDANTS OR WASTE THE COURT'S TIME, BUT TO PROTECT HIS LEGAL INTERESTS.

With respect to the final issue raised by the Appellees in their Brief, Walton refers this Court to his initial Brief of Appellant. Walton did not incur the ongoing expense of bringing a lawsuit simply to harass the Defendant-Appellees or waste the Court's time. In fact, Walton was shocked to learn later in life that his uncles, whom he could presumedly trust, may have perpetrated such fraud against him as the sole heir of his father, George, brother to the Defendants. If this matter were remanded back to the trial court, both parties would be given the opportunity at last to establish the facts through discovery.

Justin was completely unaware of the conveyances at issue in this case, and of the administration of his grandfather's estate, because his uncles, the Defendants, John and Ken

ensured that he was not mentioned in either the Petition for Appointment of Administrators or the Order Appointing Administrators as an heir at law of his grandfather Edward Lee Walton. Neither Justin Walton, nor his mother as his guardian, was ever served in any way with the initial petition to administer the estate or the order that followed that petition. Thus, he could not have known - even with reasonable diligence - that a possibility existed that his uncles were perpetrating fraud against him. Likewise, Justin Walton could have never known about the conveyances when they were made when he was only a boy. However, during this entire time, his uncles were aware of Justin's existence. Justin did not knowingly bring a frivolous action, nor did he file this action for the purpose of harassment or delay; rather, Justin began acting to protect his rights as soon as he first knew they had possibly been infringed upon in or about May of 2007, when Paul Hudson contacted Justin, and first made him aware of these matters. Before that time, he was under the impression there was not need for a suit, as he had relied on representations from his uncles, the Defendants, that his interests were protected. This again, is one of many factual issues that must be more fully developed through discovery and further proceedings after remand back to the trial court.

With respect to the assertion that "Appellant chose to file two separate actions attacking the deeds, " it should be obvious to Appellees that this fact – while not exactly accurate – does not by any means require the imposition of Rule 11 sanctions. Each suit, filed by at different times by different attorneys representing Justin, concerns a separate deed. The related Walton *v. Walton* case referenced by both parties is also currently on appeal to this Court, or possibly to the Supreme Court, and need not be considered at this time by this Court for the issues currently before it. In any case, Justin acknowledges that eventual consolidation of the two cases may be appropriate by this Court, or by the court below. The existence of that related case, however,

does not give rise to Rule 11 sanctions, and Appellees fail to cite a single piece of legal authority to the contrary. (Brief of Appellees, 12-13.)

Appellees remarkably attempt to change their proverbial horses mid-stream, arguing in their brief that the appropriate statute of limitations in this case should be section 91-7-309, imposing a period of two years, and not section 15-1-7, providing for a10-year period. (Brief of Appelees, 10, 12.) However, this is nothing more than another last-ditch effort to mislead this Court, as Appellees have clearly already agreed that section 15-1-7 is controlling statute, because their Motion to Dismiss this action was *entirely* based on section 15-1-7. (R. 13-14.) Thus, Appellees' references to what a "reasonable attorney" should have done – presumedly a shot at Justin's previous attorney who initially brought this matter to court – are not well-taken s the Appellees are far from operating reasonably: picking and choosing their legal authority at random as they continue in a seemingly fly-by-the-seat-of-their-pants manner. The fact that Appellant has aged is not something Appellant is attempting in any way to hide. In fact, Appellant's age, and not any attempted argument regarding constructive notice, in central to the determination of the issues presently on appeal to this Court.

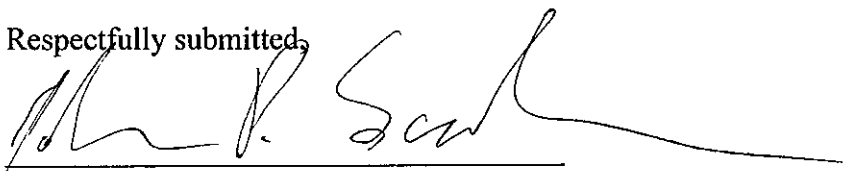
As previously stated, the rebuttable presumption alone gives basis for this suit. That presumption has not been overcome by Defendants, and has not even been tried. Further, Defendants did not make any attempt even in their Brief to this Court to overcome that presumption. Lastly, as also discussed in Justin's initial Brief of Appellant to this Court, there remain substantive questions to be litigated concerning the rights and interests of both parties which have not been adjudicated in any way yet, because of the trial court's grant of the Motion to Dismiss. No amount of sanctions is therefore appropriate in this matter, and Appellant respectfully requests this Court overturn the imposition of sanctions against him by the trial court.

For these reasons, as well as those previously submitted to this Court in his initial Brief, Justin Walton prays this Court reverse the decision of the lower court with respect to the grant of both of the Appellees' Motions, and remand for further proceedings for the facts to be developed fully so that the court may later make a better-informed decision.

CONCLUSION

Under the Appellees' proffered summary judgment standard of review, this Court must view the following allegations in the Complaint in the light most favorable to the Plaintiff Justin Walton: 1) it was both improper and unlawful for John Walton to convey real property to himself by relying on the fiduciary role conferred on him by his mother's Power of Attorney, and 2) no previous petition or application has been made for the relief sought in that Petition. (R. 2.) Even under that standard of review, taking all of these allegations in the Complaint in a light most favorable to Justin Walton, it clearly cannot be said that no genuine issue of material fact exists and that Appellees are due judgment as a matter of law. For the above reasons, as well as those previously submitted to this Court in his initial Brief of Appellant Walton respectfully requests this Court reverse the decision of the lower court, and also remand for further proceedings consistent with the opinion this Court will issue in this appeal.

Respectfully submitted,



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CERTIFICATE OF SERVICE

Pursuant to Miss. R. App. P. 25(c) and (d), I, JOHN P. SCANLON, attorney for Appellant, Justin Walton, do hereby certify that I have this day filed an original and three (3) bound copies of this Reply Brief of Appellant, as well as one (1) electronic copy, prepared on a data CD, and have sent, via U.S. Mail, a copy of the bound brief to opposing counsel at the address listed below:

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Respectfully submitted, this the 28th day of October, 2009.

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