

IN THE SUPREME COURT OF MISSISSIPPI

No. 2009-CA-00157

**IN THE MATTER OF THE ESTATE
OF LESSIE FALLON, DECEASED, BY
JOHN WENDELL FALLON, ADMINISTRATOR**

APPELLANT

v.

**JIMMY GLENN FALLON AND ANY AND ALL
OTHER UNKNOWN HEIRS AT LAW OF EMMA
LEE FALLON, DECEASED AND ANY AND ALL
OTHER PERSONS CLAIMING TO HAVE INTEREST
IN REAL PROPERTY**

APPELLEE

APPEAL FROM

GEORGE COUNTY CHANCERY COURT

BRIEF OF APPELLEE

ORAL ARGUMENT NOT REQUESTED

PARSONS LAW OFFICE

Jack Parsons, MSB # [REDACTED]

Tadd Parsons, MSB [REDACTED]

324 E. Cavers Avenue

P. O. Box 6

Wiggins, Mississippi 39577

Telephone: (601) 928-2838

Attorneys for Appellee

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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 this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

John Wendell Fallon, *Appellant*

Darryl A. Hurt, Jr., *Attorney for Appellant*
Darryl A Hurt, Sr., *member of firm of Appellant's Attorney*

Jimmy Glenn Fallon, *Appellee*

Jack Parsons and Tadd Parsons, *Attorneys for Appellee*

Honorable Randy G. Pierce, Chancellor, *Presiding trial court Judge and former Chancellor for the 19th Chancery District*



TADD PARSONS, Attorney of Record for
Appellee

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APPELLEE'S BRIEF

ISSUES TO BE CONSIDERED BY THE COURT

- I. DID THE CHANCELLOR ERR IN DETERMINING THAT SUFFICIENT CONSIDERATION EXISTED TO VALIDATE AN *INTER VIVOS* CONVEYANCE FROM LESSIE FALLON TO EMMA LEE FALLON?

STATEMENT OF THE CASE

On September 14, 2006, John Wendell Fallon, acting as Administrator of the Estate of Lessie Fallon, filed a complaint seeking to set aside a deed executed by the decedant, Lessie Fallon, to Emma Lee Fallon. At trial in the Chancery Court of George County, in front of the Honorable Randy G. Pierce, it was stipulated that the issue of undue influence would not be pursued by the Plaintiff due to the deaths of Lessie Fallon and Emma Lee Fallon. An order was issued by the Chancellor in this case on December 18, 2008 in favor of the Defendant, Jimmy Glenn Fallon.

The Appellant feeling aggrieved filed the instant appeal herein.

STATEMENT OF FACTS

Lessie Fallon deeded approximately 21 acres and a home to her daughter, Emma Fallon, on September 11, 1998. Lessie Fallon also deed property she owned to five of her other children throughout her life. No proof was submitted at trial of as to any monetary consideration changing hands for any of the said property transfer, although each deed stated consideration was given for the property transfers, as in Emma's deed. The Administrator did not try to set aside the other conveyances by Lessie Fallon to her other children. All of the other deeds had the same stated consideration as the conveyance to Emma Fallon.

ARGUMENT

I. DID THE CHANCELLOR ERR IN DETERMINING THAT SUFFICIENT CONSIDERATION EXISTED TO VALIDATE AN *INTER VIVOS* CONVEYANCE FROM LESSIE FALLON TO EMMA LEE FALLON?

It is well established law in the State of Mississippi that the Mississippi Supreme Court will only review a Chancellor's findings through the manifest error/substantial evidence rule. In Biddix v. McConnell, 911 So. 2d 468 (Miss. 2005), this Court found, "This Court's 'review of a chancellor's findings of fact is the manifest error/substantial evidence rule.' This Court has held that a chancellor's finding of fact may only be disturbed if the chancellor abused his discretion, was manifestly wrong, clearly erroneous, or applied the wrong legal standard." Biddix v. McConnell, 911 So. 2d 468 (Miss. 2005) (citing (Med. Devices, Inc., 624 So. 2d at 989 and Denson v. George, 642 So. 2d 909, 913 (Miss. 1994))).

The Chancellor in the instant case had sufficient evidence to find for the Defendant and did not abuse his discretion, further the Chancellor was not manifestly wrong, nor did he apply the wrong legal standard. Thus his findings and judgment should be upheld.

The central issue herein lies in the consideration of the deed in question. The Mississippi Supreme Court ruled in 1957, "A man of sound mind may execute a will or a deed from any sort of motive satisfactory to him, whether that motive be love, affection, gratitude, partiality, prejudice, or even a whim or caprice." Herrington v. Herrington, 98 So.2d 646, 649 (Miss. 1957) (citing Burnett v. Smith, 47 So. 117 (Miss. 1908)). In Herrington, the suit was filed to set aside a warranty deed and although the central issue in Herrington was capacity of the grantor the principle applies here. The

Court further said, “Although the proof discloses that the execution and delivery of this deed of conveyance may have been a very improvident [emphasis added] act on the part of the grantors, and especially on the part of the wife of the grantor, Mrs. Sally Hamm Herrington, in that she was giving up her homestead right in the land and any right of inheritance that she may have had as the widow of L. L. Herrington who was slowly dying with an incurable cancer, the chancellor found as a fact on the conflicting evidence that the grantors knew what they were doing when they executed the deed.” Id.

“Under Mississippi law, love and affection are considered consideration. It was reasonable for Louie to give his property to his daughter as a gift. As the chancellor noted, “[i]nter vivos deeds of gift are a perfectly respectable mode of conveyance.” Holmes v. O'Bryant, 741 So.2d 366, 370 (Miss.App. 1999) (citing Mullins v. Ratcliff, 515 So.2d 1183, 1190 (Miss.1987)). Love and affection are adequate consideration. “The chancellor's finding that the *inter vivos* warranty deed, deed of conveyance and mineral deed was facially valid is supported by substantial credible evidence and is not the result of manifest error. Before the court will scrutinize a facially valid *inter vivos* deed, a confidential relationship must be shown.” Holmes 741 So.2d at 370-1. There is no confidential relationship at issue here. This was withdrawn at the time of trial.

“Where the instrument in controversy contains a statement or recital of consideration, it creates a rebuttable presumption that consideration actually existed. The rebuttal must be made by a clear preponderance of the evidence. The subject deed begins with the words, [‘]For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, receipt thereof is acknowledged.[‘]” Lancaster v. Boyd,

927 So.2d 756, (Miss.App. 2005) (citing Daniel v. Snowdown Ass'n, 513 So.2d 946, 950 (Miss.1987)). This is directly on point with the case at bar.

The Court should also look to the Grantor's intent and wishes. There has been no issue raised as to the undue influence or the fact that this conveyance is opposed to the wishes or intent of Lessie Fallon. "While this Court has a duty to prevent a conveyance that was a product of undue influence, it has an equal duty to uphold the intent of a person who is now deceased." Lancaster v. Boyd, 927 So.2d 756, 760-761 (Miss.App. 2005) (citing Estate of McRae, 522 So.2d 731, 740 (Miss.1988)).



Also, the testimony of the Plaintiff shows that there was adequate consideration to support the conveyance given the fact that Emma Fallon cared for her mother throughout her life.

CONCLUSION

When the only factor to consider is the lack of consideration it is almost impossible for the Court to find that these are grounds for setting aside the deed unless there are other factors present to void the conveyance. In the instant case there are no other factors and the findings of the Chancellor should not be disturbed.

JIMMY GLENN FALLON

By: PARSONS LAW OFFICE

By: 
TADD PARSONS
MS Bar 

CERTIFICATE OF SERVICE

I, TADD PARSONS, of counsel for Appellants, do hereby certify that I have this date mailed a true and correct copy of the above and foregoing APPELLEE'S BRIEF to the following at their respective addresses listed below:

Darryl A Hurt, Jr., Esquire
Attorney for the Appellant
385 Ratliff Street
Lucedale, MS 39452

Honorable Randy G. Pierce
Justice, Mississippi Supreme Court
Post Office Box 249
Jackson, MS 39205

THIS, the 16th day of September, 2009.


TADD PARSONS

PARSONS LAW OFFICE

Jack Parsons, MSB # [REDACTED]
Tadd Parsons, MSB # [REDACTED]
324 E. Cavers Avenue
P. O. Box 6
Wiggins, Mississippi 39577
Telephone: (601) 928-2838
Facsimile: (601) 928-9650