SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

BRUCE NIEBANCK AND WIFE,
CLAUDIA NIEBANCK, APPELLANTS

VS. CAUSE NO. 2009-CA-00530

ROBERT D. BLOCK, MYFIS C. WIMS
AND WIFE, ANGELA D. WIMS, APPELLEES

BRIEF OF APPELLANT

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SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

BRUCE NIEBANCK AND WIFE, CLAUDIA NIEBANCK, — **APPELLANTS**

VS. — **CAUSE NO. 2007-CA-01511**

ROBERT D. BLOCK, MYFIS C. WIMS AND WIFE, ANGELA D. WIMS, — **APPELLEES**

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for the Appellants 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 disqualifications or recusals:

1. Appellants: Bruce Niebanck and wife,
   Claudia Niebanck
   5500 Austin Road
   Oxford, MS 38655

2. Appellees: Robert D. Block
   5455 Church Road
   Lake Cormorant, MS 38641

   Myfis C. Wims and wife,
   Angel D. Wims
   5485 Church Road, W.
   Lake Cormorant, MS 38641

3. Attorney for Appellants: James W. Amos
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4. Attorneys for Appellees: Lawrence L. Little
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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, James W. Amos, Attorney for Appellants, Bruce Niebanck and wife, Claudia Niebanck, do hereby certify that I have mailed by U. S. Mail, postage prepaid, a true and correct copy of the CERTIFICATE OF INTERESTED PERSONS to the following:

1- Honorable Vicki B. Cobb
Chancellor
Third Judicial District
P.O. Box 1104
Batesville, MS 38606

2- Lawrence L. Little, Esq.
829 North Lamar Blvd., Suite 6
Oxford, MS 38655

3- Mr. & Mrs. Bruce Niebanck
5500 Austin Road
Lake Cormorant, MS 386341

Dated this 22nd day of September, 2009.

JAMES W. AMOS
Certifying Attorney

TABLE OF CASES, STATUTES AND OTHER AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

None

SUPREME COURT OF MISSISSIPPI
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BRIEF OF APPELLANT
NO ORAL AGRUMENT REQUESTED

I.
STATEMENT OF ISSUES

A. THE ORDER DISMISSING COMPLAINT IS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE AND THE DECISION OF THE COURT WAS MANIFESTLY WRONG AND CLEARLY ERRONEOUS

B. THE COURT ERRED IN DENYING APPELLANTS' MOTION FOR NEW TRIAL OR AMENDMENT OF JUDGMENT

II.
STATEMENT OF THE CASE

The nature of the case, and the course of proceedings, and its disposition in the Court below are as follows. Appellants are Bruce and Claudia Niebanck. They filed a Complaint in the Chancery Court of DeSoto County, Mississippi, seeking to establish ownership of land by adverse possession. Bruce Niebanck purchased twenty-five (25) acres of land with a home

located thereon from Vivian Lynn Todd Whitlock and her husband, Robert A. Whitlock, by warranty deed dated July 11th, 1991 (Ex. 4, R.E. 8). Bruce and his wife, Claudia, have lived on that property since July 11th, 1991, approximately 17 years as of the date of the trial (Tr. 82-83). Bruce testified that when he bought the property he was more interested in the land than the actual house. He remembered walking the entire perimeter in October, 1989. He testified that the fences were intact (Tr. 83). He went on to say that if the integrity of the fence was broken where a horse would be able to escape, and he would either have someone to handle the barbed wire or he would put some barbed wire or turn the fence where the horses would not be able to break the integrity of it (Tr. 84). Bruce testified that they kept horses on the property and the horses were free to go over the entire property (Tr. 85). Mr. Niebanck testified that the disputed area of the property was the yellow shaded area on Exhibit 2 (R.E.2). He said the horses had access to that property as well. (Tr. 86). There have been other uses made of the property since it was purchased in 1991. Handicapped and underprivileged children were brought to the property by the Catholic Missions sisters. Sometimes fifty per week would be brought to the property in buses for a nature tour, for horse riding, etc. They had all types of animals, like a petting zoo. They did search and rescue training with search dogs in the disputed area. When the grass grew up in the disputed area, Bruce would use his bushhog to cut the grass. He said he was constantly bushhogging and cutting the disputed area (Tr. 86-87).

Bruce told the Court that when he bought the property in 1991 the fence was already there. He said the fence was from the south of Austin Road all the way to the back. It went straight across the back. He said he thought it was his property line (Tr. 87).

When asked at what point from 1991 when he had bought the property until now (day of

trial) did he determine there was a problem. He testified it was when he found a stake in his arena. It made him angry at the possibility of a new property line and the new property line being in his arena. These events occurred in the autumn of 2005 (Tr. 87-88). Bruce Niebanck went on to testify that he believed then and he still believes now that he owns the disputed property although he made a neighborly offer to pay the Appellees for the disputed area (Tr. 88-89).

Bruce testified that he lived on the property openly (Tr. 89). He said the fences on the property were probably forty to fifty years old. He said he understood Bill Austin built the house in 1973. He also stated that he had no dealings with Bill Austin when he bought the property. He further said that neither Bill Austin nor any other persons came over and tried to say he was on their property. He said no one ever gave him permission to use the property on his side of the fence. He also said he had not shared the use of the property with anybody other than with their guests. He said he had exclusively utilized the property (Tr.90-91).

When asked if he claimed to own the property Bruce Niebanck said he believed that he owned it from the beginning and he still believes he does now (Tr. 91).

Myfis Wims, Jr. and his wife, Angela, purchased their property in July, 2005 (Tr. 34, Ex. 6, R. E. 10). Robert Block purchased his property in July, 2005 (Tr. 79, Ex. 7, R.E. 11).

Mr. Wims said that when he bought his property he did not have a survey done. He said he and Robert Block were friends before they purchased their respective properties in July, 2005 (Tr. 35).

Wims testified that the 0.4 acre tract on Exhibit 2 was the disputed area in question as far as his portion of the law suit was concerned and that the 0.7 acre tract shown on Exhibit 2 was Mr. Block's. He testified that a real, real old fence goes all the way across the North line of the Niebanck property. He did not know how long that fence had been there but ventured to say forty years (Tr. 36-37).

Appellee, Robert D. Block, testified that he bought his property in July, 2005, the same time as Mr. Wims. He also said he knew that the fence on the North side of the Niebanck property was there when he purchased his property but he did not know it was a problem. He said his portion of the property in Exhibit 2 was the wide piece, 0.7 acres and Wims was the 0.4 acres. He said he had no knowledge of anything regarding this property from the time Bruce Niebanck purchased it in 1991 until he purchased his property in 2005 and that he could not dispute whether or not the Niebancks held it by adverse possession or not (Tr. 80-82).

Claudia Niebanck, Bruce's wife, testified they had been married forty-two years. She testified that she had heard the questions her husband had been asked and the answers he gave. When asked if her answers would be substantially the same, she said yes, but she might embellish more (Tr. 118). For instance, she said aside from riding horses and working dogs, they had dozens, hundreds, maybe fifteen hundred children come through various churches, Sunday School groups, vacation bible school groups, DeSoto industries, and adults taking nature walks on the property down to the lake to feed the fish. She said these activities took place on the whole property including the disputed areas (Tr. 118-119). Claudia further testified that they rode 4-wheelers and children rode go-carts on the disputed area (Tr. 119).

William H. Austin, Jr., a retired lawyer, testified for the defense (Tr. 134). He said he

sold the twenty-five acres to Charles and Vivian Douglas (see Exhibit 3, R.E. 7). He also said he sold some land to his friend and neighbor, Matt Campbell (Tr. 139). (See Exhibit 5, R.E. 9).

Mr. Austin and his wife built the house the Niebancks own (Tr. 142). He testified that there was never a fence considered or characterized as a boundary fence yet he had his son mow the lawn back to the fence. He described the area as a place to stop him (his son) and stop the cows from wandering through their back yard and getting into the road (Tr. 144). Appellants would point out that Mr. Austin and his wife conveyed the twenty-five acres of land owned by Bruce Niebanck to Mr. & Mrs. Douglas in July, 1979 (Ex. 3, R.E. 7) about eleven years before Bruce Niebanck bought the same property from Vivian Lynn Todd Whitlock, et vir, on July 11th, 1991 (Ex. 4, R.E. 8).

Appellants would also point out that Bruce Niebanck testified he had taken care of the property, lived on it openly, shared it with various people, that he has never considered it not to be his property, and that he has kept the integrity of the fences to maintain aesthetics. He said it was now shocking to him that there is even the slightest possibility that it will not be his property (Tr. 89).

To summarize the Statement of the Case, Bruce Niebanck purchased twenty-five acres of land and improvements in July, 1991. He and his wife, Claudia, have lived there without incident until sometime in late 2005 when it was brought to his attention by Mr. Wims and Mr. Block that there was a dispute involving the northern line of the Niebanck property. The Niebanck property was completely fenced at the time of purchase in 1991. The Niebancks were unaware that any problem existed until after the Appellees purchased their property in 2005.

Appellants contend that they have owned the disputed area of land as shown on Exhibit 2

by adverse possession for more than ten (10) years. Their ownership has been open, notorious, and visible, it has been actual and hostile, under claim of ownership, and that ownership has been exclusive, continuous and uninterrupted for more than the statutory time.

III.
SUMMARY OF THE ARGUMENT

Bruce and Claudia Niebanck were entitled to have the Chancery Court of DeSoto County, Mississippi, ordered that they have owned the disputed area of land shown on Exhibit 2, (the 0.4 acre tract claimed by Mr. & Mrs. Wims and the 0.7 acre tract claimed by Mr. Block), by adverse possession.

They bought the twenty-five acres in July, 1991. The property was fenced in on all sides. Mr. Niebanck maintained the integrity of the fences to keep their horses from getting out. He and his wife, Claudia, also had many visitors and guests to the property for tours, horse-riding, 4-wheeler riding and other activities all of which involved the disputed area of land. Mr. Niebanck cut the grass constantly including the disputed area. He has an arena on the North side of his property which includes a portion of the disputed area. Appellants may have mistakenly believed the disputed property was included in the land description contained in their deed, but they believed they were the owners. Mr. Niebanck and his wife, Claudia, acted on that belief. They thought and believed they had a claim to the title and possession of the disputed area. Appellants contend the Chancery Court's Ruling in the court below was manifestly wrong and clearly erroneous, that it was against the overwhelming weight of the evidence. The Appellants believe this Court should reverse the Chancellor's decision and render a decision granting the Appellants' ownership by adverse possession of the disputed area of land.

IV.
ARGUMENT

A. STANDARD OF REVIEW

The standard of review for a case tried before a Chancellor as set forth in Moore v. Marathon Asset Management, 2006 MSCA, 2006-CA-01405-012908 (2006) Paragraph 8 is as follows:

> "This court will not reverse the decision of a Chancery Court unless that decision was manifestly wrong, clearly erroneous, or if the Chancellor applied an incorrect legal standard. Nichols v. Funderburk, 883 So.2d. 554, 556 (Miss. 2004)."

B. THE ORDER DISMISSING COMPLAINT IS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE AND THE DECISION OF THE COURT WAS MANIFESTLY WRONG AND CLEARLY ERRONEOUS.

Section 15-1-13, Mississippi Code of 1972, Annotated and Amended, states, in part, as follows:

> "Ten (10) years' actual adverse possession by any person claiming to be the owner for that time of any land, uninterruptedly continued from ten (10) years by occupancy, descent, conveyance, or otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title."

The law has evolved out of this statute that there are six (6) elements a claimant must prove to establish a claim of adverse possession. Warehousing MGMT v. Haywood Properties, LP, 978, So.2d 684, (Miss. 2008), Paragraph 17, Thornhill v. Caroline Hunt Trust Estate, 594 So.2d. 1150, 1152-1153 (Miss. 1992), it was said,

"Possession must be "(1) under claim of ownership; (2) actual and hostile; (3) open, notorious and visible; (4) continuous and uninterrupted for a period of ten years; (5) exclusive; and (6) peaceful." Id. The party alleging adverse possession must prove each of these elements by clear and convincing evidence."

(i) Claim of ownership.

Under claim of ownership the Chancellor said in her Ruling (R.E. 1),

"There is no doubt that Mr. & Mrs. Niebanck have owned twenty-five acres on Austin Road, the property I visited today, since 1991. They have been there for quite a while. They have used the property. They have a beautiful piece of property there."

Mr. Niebanck got a deed to the property on July 11th, 1991 and he and his wife, Claudia, have continuously occupied the property since that time.

There does not appear to be any doubt that the property has been held under claim of ownership by Appellees for at least the ten year statutory period of time.

(ii) Actual or hostile.

Actual possession is effective control over a definite area of land, evidenced by things visible to the eye or perceptible to the senses. Warehousing, MGMT, Supra, Paragraph 20. In fact, in that case, citing another case, Alexander v. Hyland, 214 Miss. 348, 357-58, 58 So.2d. 826, 829-30 (1952), the Mississippi Court of Appeals said,

"An occupant of land who mistakenly believes the land lies within the boundaries established by his own deed, when the land actually belongs to another, may acquire title to that land by adverse possession."

As stated hereinabove, Mr. Niebanck said he believed that he owned the disputed portion of land in question; that is was part of the twenty-five acres described in his deed.

There was an attempt by the Appellees to get Claudia Niebanck to admit she sought permission from Bill Austin to go on his property (Tr. 123-124). Her testimony was that she only asked Mr. Austin's permission to traverse his property north of her and her husband's property line. She said there was a gate which connected her property line to Mr. Austin's wooded area to the rear of her and her husband's property line (Tr. 124-125). In other words, she was not seeking permission to use the property located within the disputed area but the property owned by Mr. Austin north of the fence she believed to be the established property line of the Niebanck property.

Consider the case of Metcalfe v. McCutchen, 60 Miss. 145 and Jones v. Gaddis, 67 Miss. 761, 7 So. 489, where it is said,

> ".... even though a party has claimed the land in controversy as being within the calls of his deed and has relied on his deed as to the foundation of his claim, when in fact the land was not within the calls of his deed, yet, if he occupied the land for the statutory period under the claim that it was his own land and was embraced within the calls of his deed, he is entitled to recover on the ground of adverse possession; that it is the fact of adverse possession under the claim of right for the statutory period that establishes title."

The Court in Metcalfe, supra, went on to say,

> "We adopt the views of those courts which hold that possession adverse in which the holder claims, and intends to claim title, without regard to the fact that the possession and claim is held and made under an honest, but mistaken, belief that the land is within the calls of his deed. It is the fact that possession is held, and that title is claimed, which makes it adverse possession, or claim, or both, though they may have resulted from a mistake; but it is their existence and their cause that the law considers, and existing, they constitute adverse possession."

The Supreme Court, in Alexander v. Hyland, Supra, page 358, also said,

"In the case of Evans v. Harrison, 130 Miss. 157, 93So. 737, 738, the Court held that when a person enters into the possession of land under the belief that it lies within the calls of his title deed and occupies it adversely against the world for the statutory period under such belief, he will acquire title thereto although it is shown later that the land does not lie within the calls of his deed, but lies within the calls of his adversary....."

Futher, the Court said in Alexander v. Hyland, Supra, p. 358,

"In the case of Daniels v. Jordan, 161 Miss. 78, 134 So. 903, 904, the Court said, 'it is the fact of adverse possession and a claim of ownership for the statutory period that confers title, and not the real fact as to the existence of the line, nor does the fact of the payment of taxes by the plaintiff, during this period, on the land by proper description, alter the defendants' rights of adverse possession.'"

Also, in Alexander, Supra, at page 359, the Court said,

"All of the lands in the disputed area had been separated from the Dr. C.S. Hyland tract by the old fence for a period of forty years. The area which had been cultivated was shown on the plat introduced in evidence as an exhibit to the testimony of the complainant; and the entire tract had been included in a pasture upon which the complainant Kellog Bobb had pastured cattle from 1931 to 1944. The complainant's evidence was sufficient to establish title by adverse possession....."

On page 358 of Alexander, Supra, the Court, citing Crowder v. Neal, 100 Miss. 730, 57 So. 1, quoting from Metcalfe, supra,

It is manifest from the evidence that Mrs. Gunning, while in possession of this land, intended to, and did, claim it as her own under an honest, but mistaken, belief that it was within the calls of her deed. Her possession was therefore adverse..... That she would have surrendered possession had she known that the land was not within the calls of her deed, is immaterial. For the character of her possession is determined, not by what she would have done, had this fact been known to her, but by what she actually did while she was in possession."

The Chancellor apparently based part of her decision upon the belief that the Appellants Had not flown a flag of ownership over the property that would have given Bill Austin notice that they were actually claiming the property by adverse possession. (See the Court's Ruling, R.E. 1). Appellants contend that there is ample evidence that they complied with this requirement. First of all, as previously set forth in this brief, Bill Austin is the person who built the fence along the north line of the subject property. He then sold the property to Mr. & Mrs. Douglas who then owned the property continuously from 1979 until 1991 when it was conveyed to Bruce Niebanck. During his ownership, he has maintained the fences, bush-hogged the property, had people over for outings on the property as well as other acts of ownership. Mr. Austin owned the adjoining property all during the time the subject property was owned by Vivian Todd Douglas Whitlock and up until 2005 when he sold his property to Matt Campbell. Mr. Austin surely was aware the subject property was fenced in (since it was he who built the fence). Therefore, it was Mr. Austin who raised the flag that furled along the northern boundary claimed by the Appellants.

In Sturdivant v. Todd, 956 So.2d. 977, at page 989, the Court of Appeals discussed this issue. They said,

> "Mere possession does not satisfy the requirement that possession be open, notorious, and visible.... Beyond mere possession, an adverse possessor 'must unfurl his flag on the land, and keep it flying so that the (actual) owner may see, and if he will, that an enemy may invade his domains, and planted the standard of conquest."

It is apparent from the evidence in this case that the necessary flag has been implanted on the northern boundary of Appellants' land for a far longer time than necessary to claim ownership by adverse possession. Appellants contend the Chancellor's ruling was against the

overwhelming weight of the evidence and that she was manifestly wrong.

Appellants' ownership has been actual and hostile under the law.

(iii) Open, notorious and visible.

From the testimony and evidence presented at the trial, there is no doubt that the Niebancks possessed the property under claim of ownership. Bruce Niebanck bought the property on July 11th, 1991, and received a deed (Tr. 82). The entire twenty-five acre tract purchased was fenced, and the fencing has been maintained since that time, much longer than the necessary ten year adverse possession period (Tr. 83-84). Even Bill Austin, one of the Appellees' witnesses, testified that he put up a fence along the edge of the thicket and had his son mow the lawn back to the edge of that fence (Tr. 144). Bill Austin sold the property to Mr. & Mrs. Douglas on July 6th, 1979 (Ex. 3). Vivian Douglas owned the property until July 11th, 1991, when she and her then husband conveyed to Bruce Niebanck (Ex. 4). That period of time, just over twelve years, is sufficient to establish ownership by adverse possession.

After the Appellants obtained the property they cut the grass (Tr. 86-87), rode horses and worked dogs, had groups of people from Sunday School classes, Vacation Bible School, DeSoto Industries, etc. on nature walks walking on their property, including the disputed area (Tr. 118-119).

The fence along the north side of the Niebanck property separated their property from the property owned by Bill Austin from before the time Bill Austin sold Mrs. Douglas the twenty-five acres of property until July 11th, 2005, when Bill Austin conveyed the adjoining land to his friend and neighbor, Matt Campbell (Ex. 5).

Mr. Niebanck unequivocally stated that he believed he owned all of the property within the boundaries of his fences, including the fence on the north side of his property. He believed that his property was up to and including the barbed wire fence. He said it was his property. He believed it was part of the twenty-five acres (Tr. 116-117).

The lower Court, in her Order, stated,

> "That for real property to be divested from the record title holder to to the adverse possessor, all six elements of adverse possession must be proven by clear and convincing evidence, and the Court finds that plaintiffs failed to sustain and meet that burden of proof in this case".

Appellants believe that they did prove by clear and convincing evidence that their possession was open, notorious and visible and that the lower Court's decision in regard to these necessary elements was against the overwhelming weight of the evidence and that the lower Court was manifestly wrong and clearly erroneous.

Appellants' ownership of the land has been open, notorious and visible.

(iv) Continuous and uninterrupted for a period of ten years.

The testimony is that the Niebancks have owned and used the disputed parcel from July 1st, 1991, until present as testified at the trial. There is no evidence to the contrary.

(v) Exclusive.

The evidence presented at the trial does, without contradiction, prove that the Appellants, and their predecessors in title, exclusively occupy the disputed parcel of land for more than the statutory length of time required for adverse possession.

(vi) Peaceful.

Again, the evidence presented was uncontradicted that Mr. & Mrs. Niebancks' possession

of the property was peaceful. No proof to the contrary was presented at trial.

C. THE COURT ERRED IN DENYING APPELLANTS MOTION FOR NEW TRIAL OR AMENDMENT OF JUDGMENT

Appellants filed a Motion For New Trial Or Amendment Of Judgment pursuant to Rule 59, *Mississippi Rules Of Civil Procedure* or, in the alternative for relief from the Order Dismissing Complaint. In the motion Appellants set forth that the Order (1) was against the overwhelming weight of the evidence; (2) was manifestly wrong and clearly erroneous; (3) that the court erred in finding there were no flags of ownership that would have given Bill Austin notice that Plaintiffs were claiming the property adversely; (4) that the Court erred in fining Bill Austin gave Plaintiffs permission to use the subject property during the time they were adversely claiming the property; (5) that the Court erred in giving credence to the testimony that Bill Austin had the property surveyed when there was no survey produced at trial; (6) that the Court erred in finding the Plaintiffs failed to meet their burden of proof of the six factors necessary to prove their claim of adverse possession; and (7) that the Court should allow newly discovered evidence that would show by clear and convincing evidence that the entire property was fenced on all sides when Mr. Niebanck purchased the property.

Appellants have addressed all of the allegations of their Motion For New Trial except for number 5 and number 7. These two allegations can be addressed as one. The Appellees did not present a copy of a survey even though Mr. Austin testified that he had the property surveyed at some point and time. The Chancellor, of her own volition, asked Mr. Austin if at the time he sold the twenty-five acres to the Douglasses he had it surveyed or if he remembered. He said "I

believe we did." He really did not remember who performed the survey. He said it might have been Billy D. Gray, Robbie Jones or Gerald Davis but he emphasized he was not certain about either one (Tr. 156-157).

In an effort to clarify the question of whether a survey of the property had been made, Appellants attached a copy of a survey that had been made by Carl Clark in June, 1991. This survey shows that the twenty-five acres of property was fenced all of the way around including the north boundary line. Appellants believe that the testimony at the trial conclusively proved that the subject property was fenced on all sides and that the proffered survey was not necessary to establish that the entire property was fenced, but it does show in black and white that the property was fenced as Mr. Niebanck testified.

Rule 59(e) *Mississisppi Rules Of Civil Procedure,* allows the Court to alter or amend its rulings. Appellants believe the lower Court should have altered or amended its Judgment by finding that the property bought by Mr. Niebanck in 1991 was fenced on all sides as evidenced by the testimony at trial and verified by the tendered survey of Carl Clark on Appellants' Motion To Alter Judgment.

V.
CONCLUSION

Bruce Niebanck and his wife, Claudia, have possessed the real property involved in this appeal, including the disputed 1.1 acres, since it was purchased in July, 1991, from the Douglasses. Vivian Douglas and her then husband bought the same property from the Austins in 1979. Before that the Austins occupied the property. While they occupied it they built fences on the property, including the fence on the north boundary line. Mr. & Mrs. Niebanck's acts of

ownership sufficiently placed on notice their claim of ownership of the disputed parcel. The fence built by Mr. Austin before he and his wife sold the property to the Douglasses and the acts referred to herein sufficiently placed their claim of ownership of the disputed parcel of land. There was more than sufficient evidence in place that Appellants had unfurled their flag of ownership over the property.

From the testimony given at trial there was clear and convincing evidence that all six of the required elements necessary to prove adverse possession were proven. From the testimony presented at trial it is clear that a casual observer would determine that the fencing surrounded the property.

The law dealing with adverse possession requires the plaintiffs to prove by clear and convincing evidence the following elements:

1- Claim of ownership;

2- Actual or hostile;

3- Open, notorious and visible;

4- Continuous for ten years;

5- Exclusive; and,

6- Peaceful.

Based upon the record of this case, Appellants have proven each and every one of these elements by clear and convincing evidence. For the Chancellor in the Court below to fine otherwise was against the overwhelming weight of the evidence and her decision was manifestly wrong and clearly erroneous.

Appellants are asking this Court to reverse the decision of the Chancellor in the court

below dismissing their complaint and to render a decision in favor of Appellants granting their ownership of the disputed 1.1 acres of land by adverse possession.

Respectfully submitted,

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SUPREME COURT OF MISSISSIPPI
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VS.	**CAUSE NO. 2009-CA-00530**
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CERTIFICATE OF SERVICE

I, James W. Amos, Attorney for Appellants, Bruce Niebanck and Claudia Niebanck, do hereby certify that I have mailed by U. S. Mail, postage prepaid, a true and correct copy of the Appellant's Brief to the following:

(1) Honorable Vicki B. Cobb
Chancellor
Third Judicial District
P.O. Box 1104
Batesville, MS 38606

(2) Larry L. Little, Esq.
Attorney for Appellees
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(3) Mr. & Mrs. Bruce Niebanck
5500 Austin Road
Lake Cormorant, MS 38641

Dated this 22nd day of September, 2009.

JAMES W. AMOS