

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

FRANK VASSER

APPELLANT

VS.

NO. 2009-CA-00612

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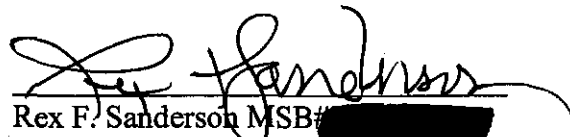
BIBLEWAY M. B. CHURCH

APPELLEE

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 justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Bibleway M. B. Church, Appellee
2. Rex F. Sanderson, Attorney of record for Appellee.
3. Henry A. Gladney, Pastor of Bibleway M. B. Church
4. Frank Vasser, Appellant
5. Frank Vasser, Jr., Appellant's son
6. T. K. Moffett, Attorney of record for Appellant.



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STATEMENT OF THE ISSUES

- I. **Whether the Chancellor erred in denying Frank Vasser's Motion to Intervene in the litigation pending against his son, Frank Vasser, Jr., et al, in the Chancery Court of the Second Judicial District of Chickasaw County, Mississippi, Cause Number CV-2008-000083.**

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APPELLEE

STATEMENT OF THE CASE

The Appellant has requested reversal of an Order of the Chancery Court of the Second Judicial District of Chickasaw County which denied his Motion to Intervene, there. The Appellee had filed a Complaint to Confirm Title of a tax deed on property titled to the Appellant's son. The Appellant had identified himself as the son in court pleadings in the case, and his true identity was revealed in his deposition. After that, the Appellant filed his motion to intervene in December 2008, and the Court overruled the motion and ordered that Appellant's pleadings be stricken.

It should be noted that the spelling of the grantee's name on his deed is Vassar, while the true spelling of his name should be Vasser. Differing names appear herein as relates to the facts presented.

The Appellee adopts the Appellant's Record Excerpts.

ARGUMENT

This case began on June 11, 2008, as a suit to confirm title based on a deed issued by the Chancery Clerk for non payment of taxes for the year 2002. The Bibleway M. B. Church (hereafter "*Bibleway*") filed suit against the record owner, Frank Vassar, Jr. (hereafter "*Vassar, Jr.*") and CitiFinancial Services, Inc. (hereafter "*CitiFinancial*"), a lien holder in the chain of title. Summons was served on *CitiFinancial*, and summons by publication was served otherwise. Attempted service of summons on *Vassar, Jr.* was returned by the Monroe County Sheriff as "not found." (Appellant's RE 8)

CitiFinancial did not file an answer. On July 21, 2008, a notice of entry of appearance and motion for extension of time was filed by "Frank Vassar, Jr." No order for extension was made. On August 12, 2008, *Bibleway* filed an application for default and a motion for judgment by default. The Court set a motion hearing on August 14, 2008. (Appellant's RE 7)

On August 25, 2008, an Answer Counter-Complaint and Cross-Complaint to set aside deeds was filed by "Frank Vassar, Jr." On October 22, 2008, a deposition of Frank Vasser (hereafter "*Vasser, Sr.*") determined that *Vasser, Sr.* had not identified himself correctly. That is, he pretended to be *Vassar, Jr.* in all of his pleadings in this case. He said that *Vassar, Jr.* was his son, and that the son did not know anything about this case, and that the son did not know that he was the title owner of the land in controversy. He did say that *Vassar, Jr.* Was surprised about this. (Appellant's RE 47)

On December 1, 2008, *Vasser, Sr.* filed a motion to intervene, and the Court denied that motion by order entered on March 4, 2009. That order also granted the motion to strike answer, counter-complaint and cross complaint as filed by *Vasser, Sr.* The denial of the motion to intervene

is the subject matter of this appeal. (Appellant's RE 10)

The issue as stated in the Appellant's brief is **"Whether the Chancellor erred in denying Frank Vasser's Motion to Intervene in the litigation pending against his son, Frank Vasser, Jr., et al, in the Chancery Court of the Second Judicial District of Chickasaw County, Mississippi, Cause Number CV-2008-000083."** *Vasser, Sr.* says that he should have been permitted to remain in the lawsuit under the provision of *Rule 24* of the Mississippi Rules of Civil Procedure.

In *Guaranty Nat'l Ins. Co. v. Pittman*, 501 So. 2d 377, the Court quotes from *Rule 24*

"Upon timely application, anyone *shall* be permitted to intervene in an action ... when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. [Emphasis added]"

The Chancellor took due consideration of the facts leading up to the filing of the Motion to Intervene, and she pointed to the false statements by the Appellant in court documents as well as his to note his timing of the Motion to Intervene was after his assuming the identity of his son in the lawsuit. The Court recounted the participation of *Vasser, Sr.* in the case to illustrate that he did not make a candid presentation of himself nor of the true party to the suit. (Appellant's RE-8 & 9)

Next the Court clearly observed the identity of the parties to this case:

"This Court finds that the real parties in interest have been named as the proper defendants by Plaintiff. It was inappropriate for Father to answer as son, Frank Vassar, Jr., and as a result the Court grants Plaintiff's Motion to Strike Answer, Counter-Complaint and Cross Complaint as filed by Father. Furthermore, the Court denies Father's Motion to Intervene as it is **this Court's finding that he is not a real party in interest**. The legal title holder of the subject property is Frank Vassar, Jr. Father, in his own motions, states he "gave" the property to his son." [Emphasis added] (Appellant's RE 9)

Rule 24 says that the granting of a motion to intervene shall be based upon the reason that

the applicant cannot protect his interest in any other manner. The Court's finding is that *Vasser, Sr.* has no interest in the case or in the property. Furthermore, *Rule 24* goes on to say that the interest may be met by the existing parties. The existing party is *Vassar, Jr.* and he is available to protect the property interest without the participation of *Vasser, Sr.* as a party. After the Court excluded *Vasser, Sr.* as a party, the son, Frank Vasser, Jr. filed his answer and counter-complaint on or about April 6, 2009, and the Court entered its Order for Trial Setting on July 7, 2009. (Appellant's RE 5 - 7)

The Appellant, Frank Vasser, illustrates his lack of timeliness and good faith as follows:

In the deposition of Frank Vasser, he states on page 13 (Appellant's RE 39) that "I pay them - - I pay them - - most of the time I pay them, it be mostly, like, the last minute." He purported to be Frank Vassar, Jr. when he filed a Motion for Extension of Time on July 21, 2008, when the answer was due " . . . thirty days after the 18th day of June, 2008, which is the date of the first publication of this summons . . ." (CP-33 & Appellant's RE 7) Then he did not file his answer until August 25, 2008, and after *Bibleway* had made its motion for default judgment. He is habitually tardy.

Vasser, Sr. offers that he has met the four part test is permitting his intervention in the lawsuit. The Appellant's brief states that *Vasser, Sr.* "... immediately retained counsel ..." and filed a notice of entry of appearance. As pointed out above *Vasser, Sr.* has the habit of waiting to the last minute in his business. In this case, he waited until he was found to have misled the Court as to his identity before requesting intervention. His conduct was also fraudulent to others, in that he had forged his son's name to one deed of trust, and, he had pledged his son's property as collateral on another deed of trust for a loan from one of the parties in this case, *CitiFinancial*. (Appellant's

RE 15 - 16 & 17-18) (Transcript page 10-11 & 15 - 16 Appellant's RE 36-37 & 41-42)

In *Hayes v. Leflore County Board of Supervisors*, 935 So. 2d 1026, the Court said that "timely" is defined by the facts. These facts support the Chancellor's findings that *Vasser, Sr.* waited until after he had misrepresented himself to the Court time and again before he confessed that he was not a true party, but that he wanted in the case anyway.

Vasser, Sr. suggests that he has an interest in the litigation or in the property of this case. He may be "interested" in the case, but he did not have an interest in the land, nor of the lawsuit. *Vasser, Sr.* claims an interest because he convinced *CitiFinancial* to make him a loan on the land titled to his son. According to his testimony, he has not paid *CitiFinancial*. (Transcript page 11, Appellant's RE 37)


Vasser, Sr. says that he cannot protect the interest he has for payment of the loan by *CitiFinancial* unless he is permitted to intervene. If he is permitted to intervene, he has no interest to protect as the land he used as collateral is not his. He has acted fraudulently throughout this process, from the preparation of the deed in another's name, to using a mail drop address that he rarely serviced Box 622, Aberdeen, as "... that box is closed and most of my mail goes back ..." because I stay out of town so much, and then signing his son's name to legal documents in the deed records and in the court records. (Appellant's RE 38)

Last, *Vasser, Sr.* claims that his son had no knowledge of the litigation (Appellant's RE 51), but he testified that "This was sort of like a surprise for him. . ." (Appellant's RE 47) As such he asserts that the son cannot adequately present a proper defense in this case. The son has the same lawyer, and he has filed the same defenses as the father did.

CONCLUSION

The Appellant says that the "common sense" approach should be followed to allow intervention by way of *Rule 24*. However, the common sense of this case is clearly shown with the Chancellor's ruling that the son is the real party, and that the father is not a party to this case. The Chancellor did not abuse her discretion, and her ruling is supported by the overwhelming evidence presented.

BIBLEWAY M. B. CHURCH, Appellee


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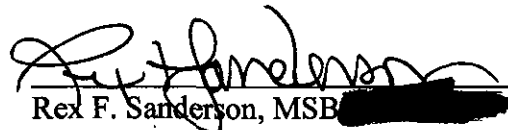
CERTIFICATE OF SERVICE

I, Rex F. Sanderson, Attorney for the Appellee, do hereby certify that I have this day mailed by United States mail, postage prepaid, a true and correct copy of the foregoing **Brief of Appellee** to the following persons at their usual mailing address of:

Judge Dorothy W. Colom
Chancery Court Judge
P. O. Box 684
Columbus, Mississippi 39703-0684

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This, the 4th day of March, 2010.



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