

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

FRANK VASSER

APPELLANT

VS.

NO. 2009-CA-00612

BIBLEWAY M.B. CHURCH

APPELLEE

**APPEAL FROM THE CHANCERY COURT OF
THE SECOND JUDICIAL DISTRICT OF
CHICKASAW COUNTY, MISSISSIPPI**

BRIEF FOR APPELLANT

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ORAL ARGUMENT IS NOT REQUESTED

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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.

- **Frank Vasser, Sr.** (a/k/a Charlie Frank Vasser and Frank Vasser), Aberdeen, MS [Appellant; father of Frank Vasser, Jr.];
- **Frank Vasser, Jr.**, Ellenwood, GA [son of Appellant; original Defendant in the Chancery Court of the Second Judicial District of Chickasaw County, Mississippi, Cause Number 2008-000083-DWC];
- **Joe A Robertson**, Columbus, MS [third party who redeemed subject property from the Chickasaw County Chancery Clerk and then sold it to Henry A. Gladney];
- **Henry A. Gladney**, Okolona, MS [pastor of Bibleway M.B. Church; purchased subject property from Joe Robertson];
- **Bibleway M.B. Church**, Okolona, MS [title holder to subject property];
- **Darnell Perry, Rafer Lee Darden, and Pecolia Gillespie**, Okolona, MS [trustees of Bibleway M.B. Church];
- **Honorable T.K. Moffett**, Tupelo, MS (attorney for Frank Vasser, Sr. and Frank Vasser, Jr.);

- **Honorable Rex A. Sanderson**, Houston, MS (attorney for Bibleway M.B. Church);
- **Honorable Dorothy W. Colom**, Columbus, MS (presiding Chancellor).

RESPECTFULLY SUBMITTED, this the 30th day of November, 2009.



T.K. Moffett (MSB# [REDACTED])
Attorney for Appellant

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VS.

NO. 2009-CA-00612

BIBLEWAY M.B. CHURCH

APPELLEE

STATEMENT OF THE ISSUES

1. 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

BRIEF FOR APPELLANT

STATEMENT OF THE CASE

Procedural History

Bibleway M.B.Church [hereinafter referred to as "Bibleway"], by and through its trustees, filed a *Complaint to Confirm Title* in the Chancery Court of the Second Judicial District of Chickasaw County, Mississippi on the 11th day of June, 2008. (CP-5). Process was issued that same day to CitiFinancial Services, Inc. [hereinafter referred to as "CitiFinancial"] and to Frank Vassar, Jr. (RE-7). A *Summons by Publication* was also issued on the 11th day of June, 2008 to:

"ALL PERSONS HAVING INTEREST IN PROPERTY DESCRIBED HEREIN: Commencing at the Northwest corner of Section 12, Township 14, Range 5 East, Chickasaw County, Mississippi, run South 2,482.89 feet to the point of beginning for this description. From said point of beginning run West 686.60 feet to the East right of way line of U S Highway Number 45 Alternate; thence run South 15°27'49" East along said right of way line 162.16 feet; thence run East along an existing fence line 643.62 feet; thence run North 157.11 feet to the point of beginning, being located in the Northeast Quarter (NE¼) of Section 12, Township 14, Range 5 East, Chickasaw County, Mississippi and containing 2.39 acres, more or less." (RE-7).

Process was perfected on CitiFinancial by personally delivering a copy of the Summons and Complaint to said Defendant's registered agent, CT Corporation System. (CP-31). Process was never served on Frank Vassar, Jr. [*correct spelling of surname is Vasser (RE-43)*]. (CP-29). *Summons by Publication* ran for three consecutive weeks - June 18, 2008; June 25, 2008; and July 2, 2008, in the Okolona Messenger. (CP-33). Said Publication stated in part that,

"YOUR RESPONSE MUST BE MAILED OR DELIVERED NOT LATER THAN THIRTY (30) DAYS AFTER THE 18TH DAY OF JUNE, 2008, WHICH IS THE DATE OF THE FIRST PUBLICATION OF THIS SUMMONS..." (CP-33).

Frank Vasser retained an attorney, and a *Notice of Entry of Appearance* (CP-34) along with a *Motion for Extension of Time* (CP-36) were immediately served on counsel for Bibleway M.B. Church. CitiFinancial Services, Inc. failed to file a responsive pleading within the time allowed, and Bibleway filed an *Application for Default* against CitiFinancial and all other persons interested in the subject property on the 12th day of August, 2008. (CP-39). Bibleway also filed a *Motion for Judgment by Default* against all Defendants in said cause on the same date. (CP-41).

An *Answer to Complaint to Confirm Title, Counter-Complaint and Cross-Complaint to Set Aside Deeds and to Quiet and Confirm Title* were filed by Frank Vasser's counsel on the 25th day of August, 2008. (CP-44). Said Complaint was served on Bibleway by faxing and mailing a copy of same to counsel of record for Bibleway on August 25, 2008 (CP-50) and on Joe A. Robertson, a party in

interest, on the 6th day of September, 2008 (CP-51). Bibleway filed an *Answer to Counter-Complaint/Cross-Complaint* on the 12th day of September, 2008 (CP-53). Bibleway also filed a *Notice of Deposition* as to Frank Vasser, Jr. on the same date. (CP-56). Depositions were ultimately held on October 22, 2008 (RE-6; Composite Exhibit 1). It came to light during the deposition that Frank Vasser and Frank Vasser, Jr. were not one and the same person, but rather father and son. Father [Appellant herein] was the actual party present during the deposition and who had previously retained counsel to defend the underlying cause of action. As a result of this discovery by both Bibleway's and Vasser's attorneys during the deposition, Frank Vasser filed a *Motion to Intervene* (CP-75) and Bibleway filed a *Motion to Strike Answer, Counter-Complaint and Cross Complaint* (CP-59) and *Motion for Protective Order* (CP-63).

A hearing was held on the 8th day of December, 2008, and the Court rendered its ruling on the 4th day of March, 2008, which was filed of record on the 6th day of March, 2009. (CP-100; RE-8). The Court, in its Order of March 4, 2008, denied Frank Vasser's *Motion to Intervene* and granted Bibleway's *Motion to Strike Answer, Counter-Complaint and Cross Complaint* and *Motion for Protective Order*. (RE-9).

Frank Vasser perfected an appeal from the Court's March 4th ruling by timely filing a *Notice of Appeal* with the Chickasaw County Chancery Clerk on the 6th day of April, 2009. (CP-108).

As of this date, litigation is ongoing as to the remaining Defendants.

Statement of Facts

Frank Vasser [also known as Charlie Frank Vasser] purchased the property which is the subject of this litigation from Garfield Major. (RE-41, line 25; RE-42, lines 1-12). Title to the property was placed in Frank's son's name, Frank Vasser, Jr. [mistakenly spelled Vassar in the Warranty Deed]. Frank Vasser paid the sum of \$26,000.00 in cash to Garfield Major for the subject property (RE-48, lines 14-15, lines 20-21). Frank Vasser also paid the yearly property taxes on same (RE-19 through RE-30). Frank Vasser always waited until the last minute to pay the taxes (RE-39, lines 6-8). Frank Vasser borrowed funds against the property on two separate occasions: he borrowed the sum of \$15,549.65 from First Family Financial Services, Inc. on the 28th day of January, 2000 (RE-15). Although the Deed of Trust was in son's name, Frank Vasser testified that he made all the payments. (RE-42, lines 10-12). He also borrowed the sum of \$43,200.00 from Washington Mutual Finance of MS, Inc. on the 30th day of March, 2000. (RE-17). [The account with Washington Mutual Finance was at some point transferred to CitiFinancial].

On September 26, 2005, Joe A. Robertson received a Deed of Conveyance from the Chancery Clerk conveying the subject property for failure of Frank Vasser, Jr. to pay certain property taxes for tax year 2002. (CP-15). Joe A. Robertson, in turn, sold the property to Bibleway M.B. Church (CP-9). Bibleway then filed the Complaint in the

underlying cause of action seeking to clear title to the subject property in favor of Bibleway.

The following facts are undisputed:

- Charles Frank Vasser [Frank Vasser] is the father of Frank Vasser, Jr.;
- Frank Vasser purchased the property which is the subject of this litigation and titled same in the name of his son, Frank Vasser, Jr.;
- Frank Vasser purchased the property as a gift for his son;
- Frank Vasser owed a debt to Washington Mutual Finance of MS, Inc. on said property as evidenced by a Deed of Trust dated March 30, 2000 and recorded in Document #2-20000334 in the office of the Chancery Clerk of Chickasaw County, Mississippi; and
- Frank Vasser paid all of the property taxes on said property from and after the date he purchased it on August 14, 1998 through the date a lapse in payment occurred, which ultimately led to the underlying litigation.

SUMMARY OF THE ARGUMENT

The Chancery Court of the Second Judicial District of Chickasaw County, Mississippi denied Frank Vasser's Motion to Intervene because it stated that he was not a real party in interest. (RE-9).

Rule 24 of the *Mississippi Rules of Civil Procedure* provides for two types of intervention: 1) Intervention of Right and 2) Permissive Intervention. Specifically, it states:

"Upon timely application, anyone shall be permitted to intervene in an action:

(1) when a statute confers an unconditional right to intervene; or

*(2) 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."*⁴

Frank Vasser should have been allowed to intervene in this cause as he is a real party in interest. He made timely application to the Court, he has an interest in the property, his interest in said property, as a practical matter, is impaired or impeded by the disposition of the underlying litigation, and his interests are not adequately protected by the remaining parties.

ARGUMENT

I. THE CHANCERY COURT ERRED BY DENYING CHARLIE FRANK VASSER'S MOTION TO INTERVENE.

Litigation as to the remaining Defendants is ongoing as of the date of this Brief. However, the denial of a Rule 24 *Motion to Intervene* is an appealable final order.² The Chancellor denied Frank Vasser's Motion to Intervene on the basis that she argued he is not a real party in interest. The standard of review of a chancellor's denial of a Motion to Intervene is abuse of discretion.³ Therefore, the Court must look to the underlying facts to make a determination as to whether or not an abuse of discretion occurred.

¹ MCRP Rule 24.

² *Guaranty Nat'l Ins. Co. v. Pittman*, 501 So.2d 377, 380 (Miss. 1987).

³ *Cohen v. Cohen*, 748 So.2d 91 (Miss. 1999).

There exists a four-part test for allowing an intervenor to participate in a legal action: 1) he must make timely application; 2) he must have an interest in the subject matter of the litigation; 3) he must be so situated that the disposition of the action may as a practical matter impair or impede his ability to protect his interest; and 4) his interest must not already be adequately be represented by existing parties.⁴

Frank Vasser meets the four part test as outlined above. As to part one, there is no set definition under MCRP 24 of what constitutes "timely", only that the Court be provided an opportunity to "take some account of the practical situation and the effect on those already parties and on the economical disposition of judicial business by allowing intervention."⁵ Frank filed his *Motion to Intervene* early on in the litigation, before any final ruling had been made. Furthermore, he testified in his deposition that he was never served with a Complaint (RE-45, lines 21-24), and he learned of it from a neighbor who saw it in the newspaper. (RE-46, lines 1-14). Pursuant to the *Summons by Publication*, the deadline for all parties claiming an interest in the subject property to respond to the Complaint was thirty (30) days after June 18, 2008. (CP-97). Frank Vasser immediately retained counsel, and a *Notice of Entry of Appearance and Motion for Extension of Time* were served on counsel for Bibleway on July 18, 2008, the 30th day. (CP-34 through 38). Because the *Notice of Entry of Appearance and Motion for Extension of Time* were served on behalf of "Frank Vasser, Jr." and not "Charlie Frank

⁴ MCRP Rule 24.

⁵ *Hayes v. Leflore County Board of Supervisors*, 935 So.2d 1026 (Miss. 2005), quoting foot notes to Rule 24.

Vasser", Charlie Frank Vasser caused to be filed a *Motion to Intervene* as soon as it was discovered that a mistake had occurred.

Part two of the test requires that he have an interest in the subject property. There is no question that Frank Vasser has an interest in the subject property. He purchased the property as a gift to his son in the hopes that he would return to live in Mississippi one day; the property was next door to his residence (RE-43, lines 22-23); he paid the sum of \$26,000.00 cash to Garfield Major for the property; he paid the property taxes on the subject property from and after the date he purchased it up through the date it lapsed in 2002; and he borrowed money against the property on two separate occasions. In essence, Charlie Frank Vasser *is* the property owner.

Part three of the test requires that he must be so situated that the disposition of the action may as a practical matter impair or impede his ability to protect his interest. Bibleway, in its Complaint, acknowledges that Frank Vasser is a party in interest in paragraph 4, where it states:

*"The **Defendant, Frank Vasser**, [emphasis added] executed a deed of trust in favor of Washington Mutual Finance of MS, Inc., dated March 30, 2000, and filed for record in Document #2-20000334 in the office of the Chancery Clerk of Chickasaw County, Okolona, Mississippi conveying the subject property in trust to J.R. Garner, trustee, for the said Washington Mutual Finance of Ms., Inc...." (CP-6).*

Frank Vasser owed money on the subject property at the time the Complaint was filed. It is incredible to believe that the Court can dispose of said property with complete disregard as to the interest which Frank Vasser has in

same. Unless allowed to intervene, Frank Vasser is unable to protect his interests.

The final test to be met must be that his interest must not already be adequately be represented by existing parties. The only other named Defendants are Frank's son and CitiFinancial. Frank testified in his deposition that his son had no knowledge of the litigation (RE-51, lines 9-13), and CitiFinancial never made an appearance or filed any pleadings in this cause. Therefore, Frank Vasser's interests were unprotected at the time he filed his *Motion to Intervene*.

Guaranty National Ins. Co. v. Pittman also called for a common sense interpretation of Rule 24.⁶ In *Guaranty*, the Court held that an interest in the rights that are at issue in the litigation is all that is necessary to satisfy Rule 24.⁷ The Court stated in part that:

*"the wording of Rule 24, in our views, calls for an interpretation based upon common sense and practicality. Legalistic formalism and mechanical jurisprudence simply do not fit the language or philosophy of the rule."*⁸

Applying the holding of "common sense and practicality", Frank Vasser has a valid interest in this litigation. He, in essence, owns the property with is the subject of this litigation; his interests are not being protected as his son was not even aware of this litigation and CitiFinancial failed to answer altogether.

⁶ *Cohen v. Cohen*, 748 So.2d 91 (Miss. 1999), citing *Guaranty Nat'l Ins. Co. v. Pittman*, 501 So.2d 377, 380 (Miss. 1987)

⁷ *Id.*

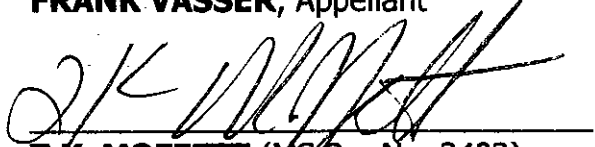
⁸ *Id.*

CONCLUSION

Frank Vasser has met all of the requirements of Rule 24 in order to intervene in this cause. Furthermore, based on *Guaranty*, a common sense interpretation of Rule 24 can be made. The Chancellor abused her discretion in denying Frank Vasser's *Motion to Intervene*. Therefore, the ruling of the Chancery Court for the Second Judicial District of Chickasaw should be reversed, and this case should be remanded for re-hearing.

RESPECTFULLY SUBMITTED, this the 30th day of November, 2009.

FRANK VASSER, Appellant


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CERTIFICATE OF SERVICE

This is to certify that I, **T.K. Moffett**, have this day delivered a true and correct copy of the above and foregoing **BRIEF FOR APPELLANT** to the following individuals by placing a copy of same in United States mail, postage prepaid, and mailing to them at their usual business addresses:

Honorable Rex F. Sanderson
Attorney at Law
108-B Jefferson
Houston, MS 38851-2697

Honorable Dorothy W. Colom
Chancellor, District Fourteen
PO Box 684
Columbus, MS 39703-0684

Dated, this the 30th day of November, 2009.



T.K. MOFFETT
Attorney for Appellant

CERTIFICATE OF FILING

The original and three (3) copies of the **Brief for Appellant** have this date been filed by placing same in *Federal Express* and delivered to:

Ms. Kathy Gillis, Clerk
Supreme Court of the State of Mississippi
Court of Appeals of the State of Mississippi
450 High Street
Jackson, MS 39201

Dated, this the 30th day of November, 2009.


T.K. MOFFETT
Attorney for Appellant