

IN THE SUPREME COURT OF MISSISSIPPI

CONSERVATORSHIP OF THE ESTATE
OF ROBERT BAIRD MOOR, BY BETTY PEARSON MOOR
AND ROBERT BAIRD MOOR, JR., CO-CONSERVATORS

APPELLANT

VS.

NO. 2009-CA-01077

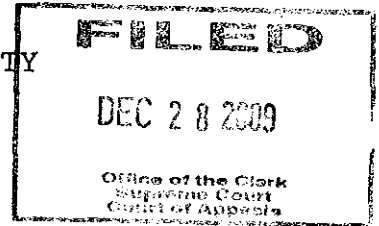
STATE OF MISSISSIPPI,
DEPARTMENT OF WILDLIFE,
FISHERIES AND PARKS;
LEFLORE COUNTY, MISSISSIPPI;
AND LEFLORE COUNTY SCHOOL DISTRICT

APPELLEES



APPEAL FROM
THE CHANCERY COURT OF THE
FIRST JUDICIAL DISTRICT OF HINDS COUNTY

BRIEF FOR APPELLANT



By: Donald W. Boykin
515 Court Street
Jackson, Mississippi 39201
601-969-3015
MB [REDACTED]
Attorney for Appellant

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. The 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 recusal.

1. Betty Pearson Moor
2. Robert Baird Moor, Jr.
3. Marion M. Moor
4. Janie Logan Moor
5. Leflore County Board of Supervisors
6. Trustees, Leflore County School District
7. Mississippi Commission on Wildlife, Fisheries and Parks
Billy Deviney
Bryan Jones
Jerry Munro
Charles Rigdon
John Stanley


DONALD W. BOYKIN
ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	i
TABLE OF CONTENTS	ii
TABLE OF CITATIONS	iii
STATEMENT OF THE CASE	1
STATEMENT OF ISSUES	5
SUMMARY OF ARGUMENTS	6
ISSUE ONE	8
ISSUE TWO.....	10
ISSUE THREE	11
ISSUE FOUR	12
ISSUE FIVE	13
CONCLUSION	16
CERTIFICATE OF SERVICE	16

TABLE OF CITATIONS

Mississippi Cases

<u>Briel v. City of Natchez</u> , 48 Miss. 423 (Miss. 1873)	14
<u>Carter v. Berry</u> , 241 Miss. 321, 136 So. 2d 871 (1962)	18
<u>City of Laurel v. Powers</u> , 366 So. 2d 1079 (Miss 1979)	14
<u>Columbus & Greenville Ry Co. v. City of Greenwood</u> , 390 So. 2d 588 (Miss. 1980)	17
<u>Monsanto Co. v. Hall</u> , 912 So. 2d 134 (Miss. 2005)	8
<u>Skrmetta v. Moore</u> , 86 So. 2d 46 (Miss. 1956)	14

Treatise

C.J.S., Section 63(b)	13
-----------------------------	----

STATEMENT OF THE CASE

On May 17, 1973, R. B. Moor, Charles H. Moor and Marion M. Moor entered with Leflore County, Mississippi the Option to Purchase and Agreement in Leflore County, Mississippi. (C.P. 6) On August 20, 1973, R. B. Moor, Charles H. Moor and Marion M. Moor executed the Warranty Deed to Otis W. Allen and R. Cunliffe McBee, as Trustees for the Leflore County, Mississippi School District, conveying the same property as described in the aforementioned Option. (C.P. 12). On October 5, 1973, the Trustees for the Leflore County, Mississippi School District executed the Special Warranty Deed to Leflore County, Mississippi conveying the same property. (C.P. 17). On December 12, 1973, Leflore County, Mississippi executed the Warranty Deed to the Mississippi Park Commission, an agency of the State of Mississippi, conveying the same property. (C.P. 20). The Department of Wildlife, Fisheries and Parks is the successor to the Mississippi Park Commission.

Subsequently, Charles H. Moor died, and his successor in interest is Janie Logan Moor. (C.P. 171) The Conservatorship of the Estate of Robert Baird Moor is the successor in interest to that of Robert Baird Moor, with Betty Pearson Moor and Robert Baird Moor, Jr., being Co-Conservators. (C.P. 176)

On April 18, 2005, the Conservatorship of the Estate of Robert Baird Moor, by Betty Pearson Moor and Robert Baird Moor, Jr., Co-Conservators, and Janie Logan Moor filed their Complaint for Declaratory Judgment against the State of Mississippi, Department of Wildlife, Fisheries and Parks; Leflore County, Mississippi; and

Leflore County School District. (C.P. 1) Their First Amended Complaint for Declaratory Judgment was filed on July 20, 2005. (C.P. 47) The land conveyed by the aforesaid deeds became known as the Florewood Plantation State Park in Greenwood, Leflore County, Mississippi.

House Bill 1741, as passed the Mississippi State Legislature in the 2004 Regular Legislative Session, and as signed by the then Governor, states, in part:

It is the intention of the Legislature that the Commission of the Mississippi Wildlife, Fisheries and Parks shall have the authority to close, transfer, lease or sell properties under the department's jurisdiction.

Pursuant to the above mentioned authority, the Legislature hereby identifies the following state parks as properties to be promptly disposed of by the Commission through closure, transfer, lease or sale:

.....
.....
.....
.....
Florewood Plantation State Park (underline supplied)
Greenwood, Leflore County, Mississippi (C.P. 111)

The Warranty Deed from the Moors to Otis W. Allen and R. Cunliffe McBee, Trustees of the Leflore County School District, provides, in part:

The above described property is conveyed to the Grantees herein, subject to the condition that the said Grantees or their successors in title utilize said property for the construction of a Historical Park, and subject to the condition that \$2,000,000.00 or a greater sum, will be expended in construction said Historical Park on the property herein conveyed, and subject to the condition that said construction shall begin on or before July 1, 1976. In the event construction is

not begun on the Historical Park within the time specified, the Grantors, their heirs or

assigns, shall have the exclusive option to purchase said property for the sum of \$750.00 per acre for a period of 120 days from the first breach of the foregoing conditions... (C.P. 12).

The Special Warranty Deed from Otis W. Allen and R. Cunliffe McBee, Trustees for the Leflore County School District, to Leflore County provides, in part:

The above described property is conveyed to the Grantee subject to that specific condition that the said Grantee, or its successors in title, utilize the said property for the construction of a Historical Park, and further subject to the condition that two million dollars (\$2,000,000.00) or a greater sum, will be expended in construction the said Historical Park on the property herein conveyed, and further subject to the condition that said construction shall begin on or before July 1, 1976, and in the event construction is not begun on or before July 1, 1976, then Charles H. Moor, R. B. Moor and Marion M. Moor, prior owners of said land, have the exclusive option to purchase said property for the sum of \$750.00 an acre, for a period of 120 days from the first breach of any of the conditions herein set out... (C.P. 17).

The aforementioned Warranty Deed from Leflore County, Mississippi to the Mississippi Park Commission (now the Department of Wildlife, Fisheries and Parks) provides, in part:

WITNESSETH

That for and in consideration of the Grantee agreeing to construct a State Park known as The Living Historical Plantation on the lands hereinafter described, and to expend the sum of Two Million Dollars (\$2,000,000.00) or more in the construction thereof, the undersigned Grantor, by these presents, does hereby sell,

convey and warrant unto the Grantee the following described property situated and located in Leflore County, Mississippi, to-wit:The warranty of this conveyance is subject to the following conditions, to wit:

4. The right and option of R. B. Moor, Charles H. Moor and Marion M. Moor to repurchase said property for the sum of \$750.00 per acre in the event said property is not used for the construction of a Historical Park on said property on which \$2,000,000.00 or a greater sum will be expended in the construction of said historical park, and further subject to the condition that said construction shall begin on or before July 1, 1976. (C.P. 20)

STATEMENT OF ISSUES

ISSUE

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN DENIED AND
THE MOORS' MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED.

SUMMARY OF ARGUMENTS

ISSUE

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN DENIED AND THE MOORS' MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED.

The property originally owned by the Moors and subsequently conveyed by Leflore County, Mississippi to the State of Mississippi was to have been used by the State as a State historical Park, and at least \$2 million dollars was to have been expended by the State on the construction of the park. The State ceased using the property as such, and the Mississippi Legislature enacted law requiring the Department of Wildlife, Fisheries and Parks to either "transfer, lease or sell" the property. The Department of Wildlife, Fisheries and Parks leased the property to Leflore County, but the lease did not require Leflore County to use the property as a historical park. Because the State did not expend \$2 million dollars on the construction of the property, and because it abandoned the use of the property as a historical park by leasing it to Leflore County, the property should revert to the Moors, or in the alternative, the Moors or their successors should have the right to re-purchase the property for \$750.00 per acre.

The Moors' First Amended Complaint alleges that the property conveyed to the then Mississippi Park Commission ceased to be used as the Living Historical Plantation or Historical Park, and that the State of Mississippi had not expended at least two million dollars (\$2,000,000.00) for the construction of the Living Historical Plantation or Historical Park. The Moors sought a declaratory judgment declaring that the conditions upon which the property was conveyed were not satisfied, or otherwise ceased to exist, and that the property should revert to them at no cost to them, or in the alternative, that they have the right to repurchase the property for the sum of \$750.00 per acre.

Subsequent to the filing of the First Amended Complaint, the Department of Wildlife, Fisheries and Parks leased on December 10, 2007 the subject property to Leflore County. (C.P. 181).

The Mississippi Department of Wildlife, Fisheries and Parks responded to the First Amended Complaint with its Motion to Dismiss or, in the Alternative, for Summary Judgment (C.P. 23). The Leflore County School District filed its Defenses and Answer to the Complaint for Declaratory Judgment on June 3, 2005, but it did not file an answer to the First Amended Complaint for Declaratory Judgment (C.P. 30). On September 9, 2005, the Leflore County School District filed its Motion to Dismiss, or in the Alternative, for Summary Judgment (C.P. 73). On September 9, 2005, Leflore

County filed its Motion to Dismiss, or in the Alternative, for Summary Judgment (C.P. 70). On January 15, 2008, the Moors filed their Motion for Summary Judgment (C.P. 167).

On March 18, 2008, a hearing was held on the Moors' Motion for Summary Judgment and the aforementioned Motions of all of the Defendants/Appellees. On June 4, 2008, the trial court filed its Final Judgment Granting Defendants' Motion for Summary Judgment and Denying Plaintiffs' Motion for Summary Judgment and its Memorandum Opinion of the Court (C.P. 229, 232). On June 13, 2008, the Moors filed their Motion to Alter or Amend Memorandum Opinion of the Court and Final Judgment (C.P. 251). On June 1, 2009, the Order of the Court was entered denying the Moors' Motion to Alter or Amend Memorandum Opinion of the Court and Final Judgment (C.P. 285). It is from the Final Judgment and Order of the Court that Appellant appeals. Janie Logan Moor is not participating as an appellant.

ARGUMENT OF ISSUE

ISSUE

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN DENIED AND THE MOORS' MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED.

This Court is to review a trial judge's grant or denial of a motion for summary judgment under a de novo standard. All evidence is to be viewed in the light most favorable to the non-movant. The movant for a summary judgment has the burden of demonstrating that no genuine issue of material fact exists, and the non-movant is to be given the benefit of the doubt as to the existence of a material fact. Monsanto Co. v. Hall, 912 So. 2d 134 (Miss. 2005).

Moor contends that the property should revert to the grantors, because (1) the property had ceased to be used as a Living Historical Park and (2) that \$2,000,000.00 had not been expended in constructing the park. The Option to Purchase and Agreement provides, in part:

WHEREAS, the Grantee herein is interested in and working toward having the Mississippi State Park Commission establish a State Park or Living Historical Plantation in Leflore County, Mississippi...

2. The above described property is conveyed to the Grantee for the sole and exclusive purpose of the Grantee or its successor in title utilizing said property as a Historical Park. \$2,000,000.00 or a greater sum will be expended in constructing said Historical Park on the property herein conveyed. Construction on said Historical Park will begin on or before July 1, 1976, and Grantees and their successors in title hereby covenant and agree to use due diligence in completing said Park. (C.P. 6-8).

The Warranty Deed from the Moors to the Leflore County School District, says, in part:

The above described property is conveyed to the grantees herein subject to the condition that the said grantees or their successors in title utilize said property for the construction of a Historical Park, and subject to the condition that \$2,000,000.00 or a greater sum, will be expended in constructing said Historical Park on the property herein conveyed, and subject to the condition that said construction shall begin on or before July 1, 1976. (C.P. 15).

The Special Warranty Deed from the School District to Leflore County contains essentially the same language. (C.P. 17)

The Warranty Deed from Leflore County to the Mississippi Park Commission contains the following language:

That for and in consideration of the Grantee agreeing to construct a State Park known as the Living Historical Plantation on the land hereinafter described, and to expend the sum of Two Million Dollars (\$2,000,000.00) or more, in the construction thereof, the undersigned Grantor by these presents, does hereby sell, convey and warrant unto the Grantee the following described property...

The warranty of this conveyance is subject to the following conditions, to-wit:

.....

4. The right and option of R. B. Moor, Charles H. Moor and Marion Moor to re-purchase said property for the sum of \$750.00 per acre in the event said property is not used for the construction of a Historical Park on said property on which \$2,000,000.00 or a greater sum will be expended in the construction of said historical park, and further subject to the condition that said construction shall begin on or before July 1, 1976.

The Memorandum Opinion of the Court incorrectly states that at least \$2 million dollars was spent on the construction of the park. (C.P. 239). The trial judge's Opinion also says, "more than \$2 million was spent on the project," suggesting \$2 million need not have been spent on construction as required by all deeds (C.P. 248). Exhibit "A," paragraph 4 to the Defendant, Mississippi Department of Wildlife, Fisheries and Parks's Motion to Dismiss or, in the Alternative, for Summary Judgment states:

4. Attached to this affidavit as Exhibit "A" is a history of expenditures made by the State Park Commission and its successor, the Mississippi Department of Wildlife, Fisheries and Parks, at Florewood State Park.

As can be plainly seen from this history, the State Park Commission did not expend \$2 million in the construction or development of Florewood State Park. Not all of the expenditures

were for construction. The construction expenditures were as follows:

Cotton Museum	\$	766,756.95
Plantation Bldgs. (Phase I)		314,216.00
Maintenance Bldg.		29,574.00
Water System		111,978.40
Water Distribution		102,132.06
Plantation Bldgs. (Phase II)		231,153.14
Day-Use/Picnic area		126,015.00
Tram		46,682.24
Tram Station		28,160.00
Tram Road		10,331.92
Phase II Buildings & Exhibits (Saw Mill, Gristmill Bolter, Shingle Mill, Planer, Cotton Gin, Steam Engine, etc.) (an unknown amount was spent on exhibits, not construction) (C.P. 28)		<u>53,925.00</u>
Total construction expenditures:		\$1,692,895.72

Neither the Option nor any of the three deeds pose a condition that \$2 million be expended on construction prior to July 1, 1976, only that the sum of \$2 million be expended for construction. Clearly, that was not done.

The trial judge's opinion refers to the expenditure of \$2 million as only a "condition," when in fact, the expenditure of that sum should also be considered a covenant. The Warranty Deed

from Leflore County to the Mississippi Parks Commission states as follows:

WITNESSETH

That for and in consideration of the Grantee agreeing to construct a State Park known as The Living Historical Plantation on the land hereinafter described, and to expend the sum of two million dollars (\$2,000,000.00) or more in the construction thereof... (underline supplied). (C.P. 20)

The use of the word "agreeing" says that the expenditure of \$2 million constitutes a covenant. Admittedly, subsequently in the deed, the expenditure of \$2,000,000.00 is also stated as a "specific condition."

Under "Option to Purchase," the Opinion states:

There is no language that states should Leflore or the State cease using the land as a park, it reverts back to the Moors. (It is assumed by the parties at the time their option to purchase and deed were drafted and executed, that this would occur by the Moors). (C.P. 238)

There were no affidavits, testimony, depositions, or other evidence stating that assumption was a fact. Moor is unclear as to what the trial judge meant by that assumption, but he should not have based his decision to grant Appellees' Motion for Summary Judgment on assumption.

The trial judge appears to say that the sole consideration given by Leflore County for the purchase of the property was \$1,050.00 per acre. Part of the consideration was the State "agreeing to construct a State Park known as The Living Historical Plantation" (see Leflore County to Mississippi Park Commission

Warranty Deed). (C.P. 20) Thus, \$1,050.00 per acre was not the only consideration paid by the State.

The trial judge's Opinion says, "there was no intent on the grantors that this property ever revert back to the Moors." (C.P. 249). The issue of the Moors' intent is a genuine issue of material fact, and thus, there can be no assumption as to the Moors's intent. The Moors's intent is shown by the subject documents, but if it is not, their intent is at a minimum a genuine issue which remains to be decided, and that can only be done at a trial on the merits.

The trial judge's Opinion says the subject land was "dedicated" to Leflore County and the State of Mississippi as an historical park. The law pertaining to abandonment of "dedicated" property does not apply to this case. However, if it does, then a portion of the Court's statement of law with respect to dedication as found in C.J.S. favors Moor. Specifically, the Court quoted 26 C.J.S., Section 63(b), which, in part, reads:

There must be some affirmative act manifesting the intent to abandon the dedicated property. However, nonuse is a factor to be taken into consideration in determining whether there has been abandonment, and may, in connection with other circumstances, show an abandonment.

The very fact that the State has leased property to Leflore County pursuant to House Bill 1741 for "outdoor recreation and other related purposes" is undisputed evidence of the State's intent to abandon the property's use as The Living Historical Park called for by the deeds.

The Court cites Briel v. City of Natchez, 48 Miss. 423 (Miss. 1873) in support of its position. The quote from Briel is not analogous to the case sub judice, because that quote says, in effect, that a governmental entity, once property is dedicated to it for public use, need not immediately construct or develop the property for the intended public use, because the need for such may arise only in later years. Skrmetta v. Moore, 86 So. 2d 46, 48 (Miss. 1956) cited by the Court in its Opinion, says in part, "An easement dedicated to the public may be abandoned by unequivocal acts showing a clear intent to abandon." While Skrmetta says that mere misuse or nonuse is insufficient to cause a reversion, nonetheless, abandonment will cause a reversion. Again, the State has abandoned the subject property. The Lease Agreement between the State and Leflore County is for a term of twenty-five years with the option to renew. As stated in The Moors' Motion for Summary Judgment, Section 21 of House Bill 1741 states, in part, "The Legislature hereby identifies the following State Parks as properties to be promptly disposed of by the Commission through closure, transfer, lease or sale: Florewood Plantation State Park, Greenwood, Leflore County, Mississippi.... The Moors, in effect, contracted for the property to be used as a Living Historical Park. Clearly, the property has ceased to be used for that purpose.

In City of Laurel v. Powers, 366 So. 2d 1079, 1080 (Miss. 1979), the City of Laurel was conveyed property by grantors, the deed stating that the property was conveyed to the City, "So long

as the property is used for public parking lot." That case arose as a result of the City of Laurel conveying part of the property to a redevelopment agency to be used as a street. The Court said:

The only title the city ever had was during the time the property should be used for public parking. The title ceased when the public parking use ended.

In holding that the property reverted to the grantors or their heirs, the Court said:

It is the Court's opinion that the execution of the Warranty Deed by the City of Laurel to the Laurel Urban Renewal Agency on December 11th, 1973, was a violation of the condition subsequent in each of the deeds and caused the property at that time to revert to the original owners as of December 11, 1973. To hold otherwise would allow the governmental subdivisions to purchase property with extensive restrictions on them validly placed there by the grantors, and subsequent thereto to convey the same to other political subdivisions and effectively negate every restriction of reservation that the grantors originally placed upon the property. Effectively, this would side-step the constitutional requirements in regard to the taking of private property for public use without just compensation. One political subdivision could purchase property from a land owner for very restrictive uses, and subsequently convey to another political subdivision and negate every restriction which the land owner originally placed on the property without any compensation whatsoever to the land owner. City of Laurel, at p. 1083.

Part of the compensation or consideration to the Moors was that the property be used for the Living Historical Park, as evidenced by the deed. If the Moors had not intended that be part of the consideration, they would not have insisted on the property being used as such. To say that the continuing use of the property

as a Living Historical Park was not part of the consideration would contradict the holding in City of Laurel. In executing the Lease Agreement with Leflore County, the State attempted to do exactly what the Court said in City of Laurel, that the City could not be permitted to do.

In City of Laurel, the Supreme Court said that the portion of the property conveyed to the redevelopment agency to be used as a street constituted an abandonment of the property by the City of Laurel, and it reverted to the original grantors. Just as in the City of Laurel, the Moors' property has been conveyed by one governmental agency of the State to another (Leflore County).

The Lease Agreement between Leflore County and the State made a weak attempt at requiring the property is to be used for a "State Park." The Lease Agreement says that the property is to be used "for public outdoor recreational opportunities, and other purposes," and says, "LESSEE'S covenants to operate and maintain the premises as a State Park...." (C.P. 181, 182). Again, it is illogical to say that Leflore County, or any county, operates a "State Park." Leflore County is not required in any way to use the property as a "Living Historical Park" as the subject deeds require. In effect, Leflore County is required only to use the property "for public outdoor recreational opportunities and other related purposes." Obviously, that is an extremely vague statement. As an example, if Leflore County installs a swing set, seesaw, and picnic table, does that satisfy the requirement? In

essence, it is obvious the State made considerably less than a half-hearted attempt to comply with the requirements of the subject deed.

The Mississippi Supreme Court has on a number of occasions stood for the proposition that the reversion of real property to the grantors or their heirs, upon the occurrence of a condition stated in the deed, does not violate the rule against perpetuities. Columbus & Greenville Ry Co. v. City of Greenwood, 390 So. 2d 588 (Miss. 1980). Appellees suggested to the trial judge that the Moors did not intend for the property to be used as a Living Historical Park, in perpetuity, but at some time, the property could cease being used as such without violating the deed. That same argument was made in Columbus and Greenville Ry Co. (C&G), wherein C&G argued that the rule against perpetuity applied. In responding to that argument, the Mississippi Supreme Court stated:

Suppose we apply the rules relied upon by C&G and hold the last clause, the controversial portion, of the 1888 deed as void, and that title was taken by Georgia Pacific in fee simple. The result would be that the next day after the deed was executed, the railroad could move its depot to another place, and could have done anything it wanted to do with the lands in question. This would have obviously have been a direct contradiction of the clearly expressed intent of the grantor when the deed was executed. Columbus & Greenville Ry Co., at p. 590.

Presumably, Appellees would have this Court believe that as long as the property was used as a Historical Park for one day, that satisfied the State's responsibilities under its deed. In none of Appellees' pleadings before the trial court did they

respond as to how long the property had to be used as a Historical Park for it not to revert to the Moors.

The rule against perpetuities means that an interest must vest, if at all, within twenty-one (21) years after a life in being at the time the interest is created. Carter v. Berry, 241 Miss. 321, 136 So. 2d 871 (1962). Thus, since the condition in the deed in the case sub judice is not subject to the rule against perpetuities, the condition never ceases to exist, such that the State has the right to cease using the property as a Living Historical Park without the property reverting to the Moors.

The trial judge's Memorandum Opinion also says:

There is absolutely no evidence that this property at issue has not been used as a historical park. In fact, Leflore County is presently using the land at issue as a historical park. (C.P. 243)

No affidavits, testimony or other evidence was presented to the trial judge to substantiate that Leflore County was using the property as a historical park. The Lease Agreement between the Department of Wildlife, Fisheries and Parks and Leflore County dated December 10, 2007, does not limit Leflore County's use of the property to a historical park. The Lease Agreement provides, in part:

4. Use of Premises

A. LESSEE agrees to use the said premises for the purpose of operating it as a state park for outdoor recreation and other related purposes. The park shall feature the usual and ordinary recreational opportunities provided by such facilities to the general public. (C.P. 182).

The language in the Option to Purchase and Agreement clearly expresses the intent of the Moors for the property to be used by the "Mississippi State Park Commission" as a "State Park" or "Living Historical Plantation." The Warranty Deed from the Moors to the Leflore County School District shows that the property was to be used as a "Historical Park." The Warranty Deed from the School District to Leflore County also says that the property was to be used for a "Historical Park." The Warranty Deed from Leflore County to the Mississippi Park Commission says that "one element of consideration of the conveyance was the Mississippi Park Commission agreeing to construct a State Park known as the Living Historical Plantation.... " The mere fact that the property was leased by the Mississippi Department of Wildlife Fisheries and Parks to Leflore County says that the property ceased to be used as a state park. The aforesaid Lease Agreement does not state that Leflore County has to use the property as a Historical Park, but as stated previously, Leflore County's use of the park is limited "only to "outdoor recreation and other related purposes."

House Bill 1741 poses no restriction on how the property may be used in any "transfer, lease or sale" of the property by the Mississippi Department of Wildlife, Fisheries and Parks. Section 24 of that House Bill further evidences the Legislature's intent that the property cease being used as a State Park by the language, "It is the intention of the Legislature that the District Office located at Florewood Plantation State Park shall cease operations at that location as soon as practicable." (C.P. 111).

CONCLUSION

The Court should reverse the trial judge's Final Judgment Granting the Defendants' Motion for Summary Judgment and render a judgment granting the Moors' Motion for Summary Judgment providing the subject property revert in fee simple to the Moors or their successors, or in the alternative, that the Moors or their successors have the right to re-purchase the property for \$750.00 per acre. In the alternative, the trial judge's Final Judgment should be reversed and the case remanded for a trial on the merits.

Respectfully submitted,

CONSERVATORSHIP OF THE ESTATE OF
ROBERT BAIRD MOOR, BY BETTY PEARSON MOOR
AND ROBERT BAIRD MOOR, JR., CO-CONSERVATORS

BY:


DONALD W. BOYKIN
THEIR ATTORNEY

CERTIFICATE OF SERVICE

I, Donald W. Boykin, do hereby certify that I have this day mailed, postage prepaid, by United States Mail, a true and correct copy of the above and foregoing Brief for Appellant to:

HONORABLE DEWAYNE THOMAS
CHANCERY COURT JUDGE
POST OFFICE BOX 686
JACKSON, MS 39205-0686


JOYCE I. CHILES
ATTORNEY, LEFLORE COUNTY
BOARD OF SUPERVISORS
POST OFFICE BOX 884
ITTA BENA, MS 38941

WILLIE J. PERKINS, SR.
ATTORNEY AT LAW
POST OFFICE BOX 8404
GREENWOOD, MS 38935

PETER W. CLEVELAND
SPECIAL ASSISTANT ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220

KYLE V. MILLER
LEMUEL E. MONTGOMERY, III
BUTLER SNOW O'MARA STEVENS & CANNADA
POST OFFICE BOX 22567
JACKSON, MS 39225-2567

This the 28th day of December, 2009.



DONALD W. BOYKIN

DONALD W. BOYKIN
ATTORNEY AT LAW
515 COURT STREET
JACKSON, MISSISSIPPI 39201
601-969-3015
MB# [REDACTED]