

IN THE COURT OF APPEALS OF MISSISSIPPI

M. L. PULLIAM, ET AL

APPELLANTS

VS.

CAUSE NO. 2009-CA-01284

ALPHA BOWEN, ET AL

APPELLEES

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. M. L. Pulliam, Lonnie Pulliam, Thomas Gene Pulliam, M. Earl Pulliam, Sammy K. Pulliam, & Linda Pulliam Wilson, Appellants.
2. Rex F. Sanderson, Attorney of record for Appellants.
3. Alpha Bowen and Genora Bowen Williams, Appellees.
4. Rita May Bowen Neal joint owner with Appellants.
5. John Fox, Attorney of record for Appellee.

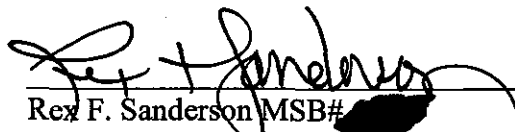

Rex F. Sanderson MSB# [REDACTED]
Attorney for Appellants
108B Jefferson Street
Houston, Mississippi 38851
(662) 456-4615
Fax: (662) 456-5697

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iii
STATEMENT OF THE ISSUES.....	iv
STATEMENT OF THE CASE.....	1
ARGUMENT.....	5
I. THE APPELLANTS PROVED THEIR ADVERSE POSSESSION OF CERTAIN PARTS OF THE LAND AWARDED TO THE APPELLEES.	
II THE AWARD OF JUDGMENT OF ADVERSE POSSESSION IN FAVOR OF THE APPELLEES WAS ERROR.	
III THE APPELLANTS PROVED THAT THE APPELLEES HAD COMMITTED TRESPASS BY CUTTING TIMBER ON THE PROPERTY OF THE APPELLANTS.	
CONCLUSION.....	14

TABLE OF AUTHORITIES

STATUTES

Mississippi Code Section 15-1-13(1).....	6
--	---

CASES

1. Jordan v. Fountain, 986 So.2d 1018 (Miss. 2008).....	12
2. McCoy v. McCoy, 611 So.2d 957 (Miss. 1992).....	5
3. Nossor v. Buford, 852 So.2d 57 (Miss. Ct. App. 2002).....	7
4. Walker v. Murphree, 722 So.2d 1277, 1281 (Miss. Ct. App. 1998).....	7
5 Webb v. Drewrey, 2007-CA-01935-COA (2009).....	7
6. Wicker v. Harvey, 937 So.2d 983 (Miss. Ct. App. 2006).....	8

STATEMENT OF THE ISSUES

- I. THE APPELLANTS PROVED THEIR ADVERSE POSSESSION OF CERTAIN PARTS OF THE LAND AWARDED TO THE APPELLEES.
- II THE AWARD OF JUDGMENT OF ADVERSE POSSESSION IN FAVOR OF THE APPELLEES WAS ERROR.
- III THE APPELLANTS PROVED THAT THE APPELLEES HAD COMMITTED TRESPASS BY CUTTING TIMBER ON THE PROPERTY OF THE APPELLANTS.

STATEMENT OF THE CASE

The Appellants and the Appellees are cousins who own adjacent properties, and their deed descriptions overlap. Additionally, there are issues of Appellants' claims of adverse possession by occupation of certain areas of the lands by each, together with a claim of trespass for Appellees' cutting timber on the land of the Appellants. The Court found that the properties should be described according to the calls of a deed which is the foundation of the Appellants claim (hereafter "*Pulliam*") rather than the descriptions of land claimed by the Appellees.' (hereafter "*Bowen*")

This litigation began with two separate cases filed in the Chancery Court of the First Judicial District of Chickasaw County, Mississippi, and the cases were consolidated for trial. (R 61, RE 17) The first case included a Complaint to Quiet and Confirm Title filed by *Bowen* in case 2006-0123-1B, (R7, RE 8), which was against M. L. Pulliam (one of the Appellants herein) and "... all other persons having or claiming interest in the property, ..." At that time, M. L. Pulliam's mother, Toily Pulliam, was a record owner of certain of the land at issue and now claimed by her children.

Mrs. Pulliam died before that case developed, and the second case was filed by the heirs-at-law of Toily Pulliam, namely, M. L. Pulliam, Lonnie Pulliam, Thomas Gene Pulliam, M. Earl Pulliam, Sammy K. Pulliam, and Linda Pulliam Wilson. That case began by a Complaint for Trespass, Ejectment, and to Quiet and Confirm Title as filed against Alpha Bowen and Genora Bowen Williams in case number 2007-000276-KBM. (R 30, RE 14)

The property at issue is in that part of the West Half of Section 4, Township 14 South, Range 4 East which lies north of Chickasaw County Road 406. (R 8, RE 9, R 30, RE 14, & R 62, RE 18) The total number of acres between the parties is 274. The *Bowens* sought to confirm title to property described in a deed from their mother, Cora Belle Bowen. (Ex P-1, RE 42) The described

property did not reach the public road. *Bowen* had a survey conducted by Chris Barker prior to filing the Complaint to Quiet and Confirm Title. (Ex D-1, RE 47) The survey plat revealed that the *Bowen* deed description did not conform to their occupation of the land. The *Bowen* original title source was a Forfeited Land Tax Patent from the State of Mississippi to Lonnie Bowen, the grandfather of *Pulliam*, and the great uncle of *Bowen*.

The Tax Patent described the land as “NE cor. Sw 1/4, 30 acres and E. Side NW 1/4, 70 acres of Section 2 Town. 14 Range 4 County of Chickasaw . . .” (Ex P-1, RE 32). No deed from Lonnie Bowen in the chain to *Bowen* is found. The later *Bowen* deeds described the land as the “East Half of the Northwest Quarter of Section 4 - and the East Half of the Northeast Quarter of the Southwest Quarter of Section 4.” (Ex P-1, RE 36, 40, 42) The deed to the *Bowen*’s from their mother included this description. (Ex P-1, RE 42) The survey showed that these descriptions did not include *Bowen* home property nor two lots along the County Road, which were sold by *Bowen*’s parents. (Ex D-1, RE 47 & Ex P-1, RE 38, 39) Also, the survey plat showed that the property described in the deeds to the *Bowens* did not connect to the public road.

Meanwhile, the deed to Toily Pulliam relied upon by *Pulliam* described her land as “. . . beginning at the northwest corner of Section 2 . . . and run thence east 25.60 chains, thence south 66.40 chains to the center of the . . . Public Road, thence running westerly along the center of said public road 25.60 chains, more or less, to the west line of said Section 2, thence north along the section line 71.90 chains to the point of beginning, . . . containing 174 acres, more or less..” (Ex P-1, RE 44) The Court found that the description provided by this deed should be followed to determine the intended division between *Pulliam* and *Bowen*. (R 74, RE 29)

It should be noted that the Court converted the measurement of distance in “chains” to

measurement of distance in "feet" in the final descriptions. It should also be noted that there were no clear deed or deeds from Lonnie Bowen to either of the parties nor their families.

The *Pulliam* family grows trees on their property, and the Bowen family land was mostly clear, and the *Bowen* land pastured horses. The *Bowen* property had some fencing on the south part. There was testimony by Alpha Bowen (T 85, RE 87) that timber was cut by *Bowen*. *Pulliam* showed photographs of timber that was cut and *Bowen* showed a check received for the harvest of the timber. (Ex P-3, RE 52) The photographs showed that trees were cut with signs of "posted - no trespassing" attached. (Ex D-4 , RE 129-130)

The Court found that *Pulliam* did not prove the location of the cutting of the timber (R 65, RE 21), therefore no award for trespass was made by the Court in its ruling that "... all other relief is denied.." (R 76, RE 31) The Court made an observation of the land and pointed out that there were "No Trespassing" signs near the road, but that there was no indication of ownership of the signs nor the property in dispute. (R 65, RE 21)

Pulliam's claim for adverse possession of certain land included testimony by M. L. Pulliam that the property they had used for part of the timber land lay east of the land described in the deed to Toily Pulliam. (Ex P-1, RE 44) Additionally, M L Pulliam testified (T 140, RE 87) that a fence extending northward from the County Road, and from the northeast corner of the lot of Angela Fitzpatrick (Ex P-1, RE 39) northward to the south line of *Bowen's* 70 acre tract was property of and was occupied by *Pulliam* from the years after the deed to Toily Pulliam, which was dated November 19, 1955. (Ex P-1, RE 44) Alpha Bowen testified to the existence of two fences and that one fence "... that separates his property from our property." (T81, RE 83)

The Court found that there was not sufficient evidence to support a claim of adverse

possession of land extending to the fence or fences by *Pulliam*. Likewise, the Court found that *Bowen* did not prove a claim of adverse possession of 80 acres instead of 70 acres or less on the east side of the Northwest 1/4 of Section 2. The Court found that *Bowen* should be awarded ownership of the property lying adjacent to the public road and east of the land described by the Toily Pulliam deed. (Ex P-1, RE 44) It should be noted that there is part of the land claimed by *Pulliam* that lies east of the land described in the Toily Pulliam deed and is bordered on the east by the fence referenced by Alpha Bowen (T 81, RE 83) as being the line between the parties.

At some point in time the later deeds in favor of the *Bowen* caused the county tax assessment rolls to be modified showing that *Bowen* had 109 acres instead of the 100 acres as set out in the Tax Patent. (Ex P-1, RE 32) *Bowen* was assessed with 109 acres from at least 1999. (Ex D-3, RE 51) *Pulliam* was assessed with 160 acres. (Ex P-5, RE 46) That apparently led to the *Bowen* lawsuit to quiet and confirm title, intending that the land next to the county road be ratified as that of *Bowen*. The counter position was offered in the suit by *Pulliam* to claim the land described in the deed to Toily Pulliam, together with the land occupied by the *Pulliam* family should be awarded to *Pulliam*.

The Court determined that Bowen should have the east 950.4 feet of the Northwest Quarter and the east 950.4 feet of the Southwest Quarter of Section 2. The Court determined that *Pulliam* should have the land lying west of the Bowen property in Section 2, all being north of County Road 406. The Court did not award damages for trespass in cutting timber.

ARGUMENT

I. THE APPELLANTS PROVED THEIR ADVERSE POSSESSION OF CERTAIN OF THE LAND AWARDED TO THE APPELLEES.

The original source of title in *Bowen* was the Tax Patent to Lonnie Bowen for 100 acres from the State of Mississippi (Ex P-1, RE 32), but the deeds relied upon by the *Bowen* claim created a new description for the 100 acres. Instead of describing 70 acres on the east side of the Northwest Quarter and 30 acres in the northeast corner of the Southwest Quarter of Section 2, the descriptions said the east half of the Northwest Quarter (80 acres) plus the East Half of the Northeast Quarter of the Southwest Quarter (20 acres) of Section 2, Township 14 South, Range 4 East. (Ex P-1, RE 36, 40, & 42)

The Court found that the description of the *Bowen* property should be modified from that found in the later deeds (Ex P-1, RE 36, 42 & 43) to describe the lands east of, and adjacent to the land described in the Toily Pulliam deed (Ex P-1, RE 44) which was favored because it contained a description by metes and bounds, whereas the *Bowen* deeds did not contain metes and bounds. (R 66-67, RE 22-23) The court found that a mistake had existed between the descriptions of the separate parties' deeds, and that "A deed description that arises from a mutual mistake of the parties may be corrected. That a mistake existed must be proved beyond a reasonable doubt." *McCoy v. McCoy*, 611 So. 2d 957 (Miss. 1992). The Court found that there was no doubt that the deeds show an obvious overlap, "... thus the mutual mistake." (R 67, RE 23)

The Court's Conclusion described the properties for which each party should be awarded judgment title to their separate ownerships. It should be noted that the Court converted the

measurements (metes and bounds) previously by chains into measurements in feet. See the following:

Pulliam: A tract of land in Section 2, Township 14 South, Range 4 East, Chickasaw County, Mississippi and more particularly described as beginning at the Northwest corner of Section 2, Township 14, Range 4 East and run thence East 1,689.6 to a point on the north side of said Section 2 and thence south 00 degrees 44 minutes 49 seconds west for 4,382.40 feet more or less to the center line of County Road 406 (Houston and Buena Vista Public Road and Old State Highway No. 8); thence running westwardly along the center of said road for 1,689.6 feet more or less to the west line of said Section 2; thence North along the section line 4,745.4 feet, more or less, to the point of beginning.

Bowen: A tract of land located in Section 2, Township 14 South, Range 4 East, Chickasaw County, Mississippi, and more particularly described as beginning at a point which is 1689.6 feet east of the Northwest Corner of said Section 2, Township 14 South, Range 4 East; thence run south 00 degrees, 44 minutes, 49 seconds west and along the east boundary of the said Pulliam property for a distance of 4382.40 feet, more or less, to the center line of county road number 406 (formerly Old State Highway 8); thence continue in a southeasterly direction along the center line of said county road to the southwest corner of the Angela Fitzpatrick property as described in Deed Book 674 at page 4 of the land records of Chickasaw County, Mississippi; thence north 00 degrees, 43 minutes, 57 seconds east along the west line of said Fitzpatrick property for 210.00 feet; thence south 65 degrees, 18 minutes, 59 seconds east along the north line of said Fitzpatrick property 188.57 feet to a point; thence run south 10 degrees, 21 minutes, 00 seconds west along the east line of the Fitzpatrick property for 198.08 feet to the center line of county road 406, thence run south 65 degrees, 18 minutes, 59 seconds east along said center line for 465.77 feet to the southwest corner of the Howard Evans property as described in Deed Book 484 at page 535 of the land records of Chickasaw County, Mississippi; thence run north 00 degrees 43 minutes, 57 seconds east along the west line of said Evans property 104.38 feet to a point; thence run south 65 degrees, 18 minutes, 59 seconds east along the north side of said Evans property for 104.38 feet to the northeast corner of said Evans property; thence run north 00 degrees, 43 minutes, 57 seconds east along the east line of the Evans property and an extension thereof for 4691.94 feet, more or less to the Northeast corner of the East one-half of the Northwest quarter of Section 2, Township 14 South, Range 4 East, Chickasaw County, Mississippi, thence run north 89 degrees, 53 minutes, 29 seconds west along the north line of said Section for 950.4 feet more or less back to the point of beginning.

Mississippi Code Annotated section 15-1-13(1) provides the following:

“Ten (10) years’ actual adverse possession by any person claiming to be the owner

for that time of any land, uninterruptedly continued for 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 . . .” *Webb v Drewrey*, 2009-MS-0225.177

In this case, the number of years required for determination of adverse possession is well settled, and it is without any challenge. The land and the separate descriptions of the parties’ lands is the issue, here. In *Webb v Drewrey* overlapping descriptions existed as in this case, and, a fence aided the determination of the property line by adverse possession. *Pulliam* and *Bowen* offered testimony about fencing on the south part of their lands. They could not agree on which of two fences in the south part of the lands was the line. Old fencing on the north part of their lands was no longer apparent.

This judgment by the Court establishes two (2) parallel tracts of land with a single straight line running north and south between the properties. The Court followed the land description contained in the Toily Pulliam deeds (Ex P-1, RE 44 & 45) as the beginning for the two land descriptions. That is, the Court used the measurement in those deeds that commenced at the northwest corner of the section and then east 25.60 chains (1689.6 feet) to establish a point on an east and west line between these parties’ lands.

Bowen had claimed eighty (80) acres or the east half of the Northwest Quarter of Section 2, and asserted ownership by adverse possession. Since there was an over lapping of descriptions, the Court determined that part of the property was “wild” land, and it was not possible to prove the existence of such adverse possession on the proof offered. *Walker v. Murphree*, 722 So. 2d 1277, 1281 (Miss. Ct. App. 1998) *Bowen* had alleged that payment of taxes on the 80 acres made up that proof. The Court rejected that position citing *Nosser v Buford*, 852 So. 2d 57 (Miss. Ct. App. 2002)

However, the descriptions contained in the judgment of the Court do not completely take into

account the result to the occupation of the lands by the parties for the better part of sixty (60) years. The testimony of M. L. Pulliam offered that the parties had observed the property line adjacent to the county road was established by fencing. (T 140-141, RE 122-123) Alpha Bowen testified that there was a fence that separated the lands of the two families. (T 81, RE 83) The parties testified about different fences, but they clearly show that the property line in the south part of their lands is set by a fence.

That is, M. L. Pulliam said that his family occupied and claimed all land laying west of a fence extending northward from the northeast corner of the Fitzpatrick property. (T- 144, RE 126) (EX P-1, RE 39) Alpha Bowen said that the *Pulliam* property lay west of a fence extending north from the county road and from the northwest corner of the Fitzpatrick property. (T 81, RE 83) Either way, there is a fence that must be observed as the line between these parties. The Court said that the Bowen property next to the road should be confirmed in them by adverse possession. (R 68-69, RE 24-25)

The presence of fencing in this case provides the elements of adverse possession, which is to define the land claimed. The evidence should be by things “ . . visible to the eye or perceptible to the senses.” *Wicker v Harvey*, 937 So.2d 983 (Miss. Ct. App. 2006) The matter before the Court here is based on some exact distances, and some without distances to help define the lands in question. M. L. Pulliam showed by his drawing on an ASCS map (Ex D-2, RE 50) that the shape of the lands should be an off setting nature and not parallel parcels.

The Tax Patent in favor of Lonnie Bowen (Ex P-1, RE 32) shows that the shape of that land should be in the form of a “panhandle.” The survey by Chris Barker showed that the shape of the land should be in the shape of a panhandle. The differences between *Bowen* and *Pulliam* are

necessarily resolved by observing this such shape rather than parallel parcels.

The Court's determination in applying adverse possession here allows them ownership of land that Alpha Bowen testified was not his. He testified as to the property being divided between the parties by a fence. While there was disagreement between them as to which fence was the border, clearly there is a fence that must be considered as the boundary in the lower (south) part of the land in dispute, here. The judgment of the Court does not agree with this and the judgment awards land to *Bowen* beyond the borders, and beyond the expectation and claim of *Bowen*.

The Court expressed that an "... onsite observation of the property ..." revealed no evidence of adverse possession by either party. (R 64, RE 20) *Pulliam* respectfully disagrees with the finding. Further, *Pulliam* suggests that the Court may not have been aware that the determination of adverse possession by *Bowen* in the south part of the land actually gave land that Bowen did not claim. The judgment awards *Bowen* land west of the fencing which runs along the tree line which lies west of the Fitzpatrick property. It certainly gives *Bowen* land west of the fence on the east side of the Fitzpatrick property.

The Court said that "... the Bowens are the only persons with a claim to the property due west of the south part of their existing property ... Again, the inclusion of the property plus the portion north of the road best reflects the intended conveyance of approximately 100 acres." (R 68, RE 24) This follows the reasoning that the Bowen land in the Northwest Quarter of Section 2 should be the east 950.4 feet to the quarter section. Thereby, the Court made adjustments accordingly along the county road in favor of *Bowen*, even though the occupation and perception of the *Bowen* land was otherwise less on the south than on the north.

The survey by Chris Barker did show the fence along the west side of the Fitzpatrick

property, (Ex D-1, RE 47) and Chris Barker testified that there were two (2) fences (T 51-53, RE 62-65) on the west side of the *Bowen* property, however he did not show both of the fences on the survey plat. He said that his job was defined as "... set the corners in ..." "We didn't actually mark the line in between the two corners. So if there is a fence over there, I can't testify to that." (T 54, RE 65) Barker did say that he could have run the line from the corners if he had been called upon to do so. (T 59, RE 70)

The east-west dimensions of the property awarded by the Court to *Bowen* above is 950.4 feet. Whereas, the east-west dimension of the property *Bowen* claims by survey was 600 feet . Please see the full plat (Ex D-1, RE 47) which shows a scale of one inch (1") equals to two hundred feet (200). That means that the Court's award of land along the county road extends at least 350.4 feet beyond the line claimed by *Bowen*.

The only deeds in the record from Lonnie Bowen are deeds of trust (Ex P-1, RE 34 & 35) that describe the land as it was in the Land Tax Patent. Likewise, the only deed from Bowen's father, Duffie Bowen, is a Timber Sale Contract dated February 3, 1992, that describes the land as follows:

"TOWNSHIP 14 SOUTH, RANGE 4 EAST

SECTION 2: The East ten chains of the Northwest Quarter and the East ten chains of the Northeast Quarter of the Southwest Quarter, all in said Section 2, Township 14 South, Range 4 East, Chickasaw County, Mississippi.

LESS AND EXCEPT 1/4 acre in the form of a square located in the Southeast corner of the Northeast Quarter of the Southwest Quarter of said Section 2. " (Ex P-1, RE 37)

Since one chain is 66 feet, then the east and west dimensions of the Duffie Bowen timber deed description is 660 feet, which is very close to that measured by and reported by Chris Barker's survey plat. (Ex D-1, RE 47) The award of property to Bowen should not extend beyond the fence

to the west.

Additionally, Chris Barker said that his survey shows that Bowen had 109.47 acres within the boundaries of the corners set by Barker. (T 50, RE 61) He said that number would be 110.7 acres if the parcels described in the Fitzpatrick and Evans deeds were added to the Bowen land total. (T51, RE 62) Then, if one deducts the ten acres claimed by *Bowen's* deeds in the north part of the land, *Bowen* has a result of the 100 acres originally intended.

Therefore, *Pulliam* has occupied, claimed and held to the exclusion of *Bowen* all property west of the fence line which is 600 feet due west of the center line of Section 2. *Pulliam's* claim has been for more than ten years, and it has been open, notorious, and *Pulliam* has exercised control over the property to the exclusion of *Bowen* and all others. Then the description of the Bowen property would be:

Parcel 1: Seventy (70) acres on the east side of the Northwest Quarter of Section 2, Township 14 South, Range 4 East.

Parcel 2: Thirty (30) acres in the northeast corner of the Southwest Quarter of Section 2, Township 14 South, Range 4 East. (Less and Except Fitzpatrick & Evans parcels)

See Exhibit P-1, RE 32 for the Mississippi Forfeited Tax Land Patent to Lonnie Bowen dated June 27, 1941, which provides the above description.

II THE AWARD OF JUDGMENT OF ADVERSE POSSESSION IN FAVOR OF THE APPELLEES WAS ERROR

As stated above, the Court determination allowing Bowen a judgment for adverse possession of land beyond the fence observed by *Bowen* as the property division line is in error. The Court may not have taken into account the distances created when the judgment was entered. The Court did take great pains in the running of the descriptions of the lands of these parties, however, the

configuration of the lands of each is altered radically from the expectations of the parties.

That is, the description for the south part of the *Bowen* land will now reach over into the tree farm of Pulliam as the maximum distance from the east border to the west border of that part of the *Bowen* land is 600 feet according to their survey. (EX D-1, RE 47) That reaches even further beyond the fence that *Pulliam* claims as the dividing property line.

The Court opinion observes that the *Bowen* predecessors in title had conveyed the two parcels to Fitzpatrick and to Evans, thereby exercising evidence of ownership over the land connected to the county road while the deeds they held described the property otherwise. (R 62, RE 18) That passage from the Court opinion continues to point out that the westernmost property of *Bowen* was the lot “ . . . occupied by a mobile home of substantial age . . . ”

The description of this part of the *Bowen* land should not reach beyond the fence line that borders the tree farm of *Pulliam*, and Pulliam’s claim as to the other fence as the property line needs to be taken into account.

In *Jordan v Fountain*, 986 So.2d 1018, 1021, 1022 (Miss. Ct. App. 2008) the standard of review of the findings of a trial judge are set forth as greatly limited. In *Jordan*, the Court reversed the findings of the Chancellor as it related to findings of adverse possession. “This Court will not disturb the findings of a chancellor when supported by substantial evidence unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied.” It is suggested that error exists in this case as the findings are different from the explicit testimony of the two parties’ in this case who both stated that a fence is the line.

III THE APPELLANTS PROVED THAT THE APPELLEES HAD COMMITTED
TRESPASS BY CUTTING TIMBER ON THE PROPERTY OF THE
APPELLANTS.

Pulliam showed that the timber cut by *Bowen* included trees bearing signs of “No Trespassing” placed by *Pulliam*. (Ex D-4, RE 129-130) It is clear that *Bowen* did not take the care to instruct the timber cutter as to the location of the trees that should be cut. (T 85, RE 87) Alpha *Bowen* testified that he did not supervise the cutting process, and the instructions given to the timber cutter were limited at best. Alpha *Bowen* testified, I gave him a map from the tax office (T 87, RE 89) “. . . I gave him the map, and he was supposed to cut the best timber. . .” (T 88, RE 90)

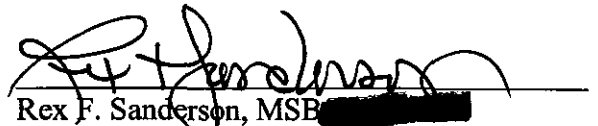
It is clear that *Bowen* was enriched by the timber harvest, (Ex P-3, RE 52) and it is clear that *Pulliam* was damaged by the harvest of trees cut from that property. *Bowen* instructed the cutter to get the best timber, and he did not show from his testimony that the trees were cut on his land. Rather, the proof of the photographs (Ex D-4, RE 129-130) shows that he cut down the trees that had the signs placed to warn all that the land should not be entered, much less to cut down the very trees that made the property line between these parties.

CONCLUSION

The judgment of the Chancery Court should be modified to adjust the land descriptions to allow for existing fence lines to determine the boundary between the parties in the Southwest Quarter of Section 2, Township 14 South, Range 4 East. That is, the award in the judgment of that Court effectively removes property lines which have been in place for decades. That judgment subtracts land from the Appellants, and it adds land to the Appellees in an area that they did not and do not claim.

Further, the Court should be allowed to revisit the subject of the Appellants' claim of trespass for the harvest of timber on land not owned by the Appellees. The actions of the Appellees was done with complete disregard of the property lines and the preservation of the timber of the Appellants.

Respectfully submitted,


Rex F. Sanderson, MSB [REDACTED]
108-B Jefferson Street
Houston, Mississippi 388581
(662) 456-4615

CERTIFICATE OF SERVICE

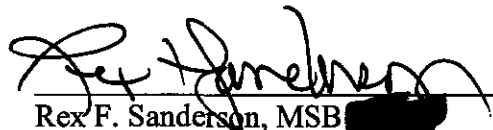
I, Rex F. Sanderson, Attorney for the Appellants, do hereby certify that I have this day mailed by United States mail, postage prepaid, a true and correct copy of the foregoing

Brief of the Appellants to the following persons at their usual mailing address of:

Judge H. J. Davidson, Jr.
Chancery Judge
P. O. Box 684
Columbus, MS 39703-0684

Mr. John P. Fox
Attorney at Law
P. O. Box 167
Houston, MS 38851

This, the 26th day of February, 2010.

A handwritten signature in black ink, appearing to read "Rex F. Sanderson", is written over a horizontal line.

Rex F. Sanderson, MSB [REDACTED]
Attorney at Law
108-B Jefferson Street
Houston, Mississippi 38851
(662) 456-4615
Fax: (662) 456-5697