

IN THE SUPREME COURT OF MISSISSIPPI

**NO. 2009-CA-01319
CONSOLIDATED WITH 2009-CA-01355**

PHILLIP MORROW

APPELLANT

V.

RONALD MORROW AND JOEL MORROW

APPELLEES/RESPONDENTS

**APPEALED FROM THE CHANCERY COURT OF
ITAWAMBA COUNTY, MISSISSIPPI
CAUSE NOS. 2000-0285-29-L AND 2000-0286-29-L**

**RESPONSE BRIEF OF APPELLEES/RESPONDENTS
RONALD MORROW AND JOEL MORROW**


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ORAL ARGUMENT IS NOT REQUESTED

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.

Phillip Morrow	Appellant
Joel E. Morrow	Appellee
Ron E. Morrow	Appellee
Trustmark National Bank	Lienholder
Chancellor Talmadge D. Littlejohn	Trial Judge
Casey L. Lott, Esq.	Counsel for Appellant
Michael D. Tapscott, Esq.	Counsel for Appellees
A. Rhett Wise, Esq.	Trial Counsel for Appellee & Estates
Roger M. Tubbs, Esq.	Trial Counsel for Appellant
Michael D. Ferris, Esq.	Trial Counsel for Trustmark
L. F. Sams, Jr., Esq.	Trial Counsel for Trustmark



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Attorney for Appellees/Respondents

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STATEMENT OF ISSUES

- I. Phillip Morrow failed to meet his burden of proof for reformation of Deeds.
- II. Phillip Morrow failed to prove the Acknowledgement on the Deed contained an error.
- III. Phillip Morrow cannot rely on the After-Acquired Title Doctrine as he neither pleaded it nor disclosed it as an opinion by his expert witness.
- IV. The After-Acquired Title Doctrine does not apply to vest title in Phillip Morrow even if it were properly considered.
- V. Phillip Morrow failed to prove that the 1996 Deed from his parents was the most recently delivered.
- VI. Phillip Morrow is not entitled to an equitable lien as his expenditures and labor did not benefit his brothers.

STATEMENT OF THE CASE

COME NOW Appellees/Respondents Ronald Morrow and Joel Morrow and present their statement of the case in the above styled and numbered appeal, to wit:

(i) Nature of the Case.

Plaintiff/Appellant Phillip Morrow filed a Complaint to Quiet and Confirm Title to approximately 200 rural acres, claiming that he was the exclusive owner of the tract pursuant to Warranty Deeds from his deceased parents. Phillip Morrow claimed exclusive ownership even though he conveyed the property to his parents through the most recent Deed covering this property. Ronald Morrow and Joel Morrow, brothers to Phillip Morrow, claimed that each of the three brothers inherited an undivided one-third interest in the land from their parents. In the event the court concluded that the brothers jointly owned the property, Phillip Morrow asked, alternatively, that the Court grant him an equitable lien on the property because of his alleged expenditures of funds and labor to improve the property. The Trial Court correctly denied all relief sought by Phillip Morrow.

(ii) Course of Proceedings and Disposition in Court Below.

Intestate estates were opened for both Gocher Morrow, deceased, and his wife, Reba Eloise Sparks Morrow, deceased (collectively "parents"), in Causes No. 2000-0285 and 2000-0286, respectively, in the Chancery Court of Itawamba County, Mississippi. During the course of the administration of these estates, Phillip Morrow, one of the three children of the parents, filed a Complaint to Quiet and Confirm Title to approximately 200 acres and named as respondents his brothers, Appellees Joel Morrow and Ron Morrow. (Tr. at 141-45.) Both Ron Morrow and Joel Morrow filed

Answers to the Complaint and also counter-claimed to quiet and confirm title in the estates of their parents. (Tr. at 258-68.)

Following a consolidated hearing on these Complaints, the Trial Court entered a judgment quieting and confirming title in the subject property to the parents prior to their death. (R.E. at 8-13.) This judgment also found that the subject property passed by intestate succession in equal parts to their three children. Id.

In the event the court refused to recognize Phillip Morrow's exclusive ownership of the subject property, he asked alternatively that the court grant him an equitable lien on this property. (Tr. at 141-45.) The Court conducted a hearing on this issue on December 3, 2004, but denied the equitable lien. (Hr'g Tr. vol. 2 at 234-35, Dec. 3, 2004 and R.E. at 15-16.) On July 14, 2009, the court entered a decree admitting final accountings of the joint estates and discharging Joel Morrow as Administrator. (Tr. at 661-65.)

(iii) STATEMENT OF FACTS

Gocher Morrow and Reba Eloise Morrow were husband and wife who resided in Itawamba County, Mississippi. (Pet. for Appt. of Admin. Tr. 7, Case No. 2009-CA-01355.) Gocher Morrow died on or about January 5, 1999, and left as his heirs-at-law his wife, Reba Eloise Morrow, and his children, Joel E. Morrow, Ronald E. Morrow and Phillip E. Morrow. Id. Reba Eloise Morrow died intestate on or about January 1, 2000. (Pet. for Appt. of Admin. Tr. 8, Case No. 2009-CA-01319.) Reba and Gocher Morrow had owned approximately 200 rural acres in Itawamba County, Mississippi, described in particularity in a certain Warranty Deed marked Exhibit "2" during the consolidated hearing on separate Complaints to Quiet and Confirm Title in both of the estate proceedings.

Phillip Morrow had previously lived with his parents in the Ozark Community of Itawamba County, Mississippi, before moving to South Carolina and returning to Mississippi in 1989. (Joint Hr'g on Compls. to Quiet and Confirm Title, Supp. Vol. 1 at 25, Feb. 28, 2004.) The parents conveyed the 200 acres to Phillip Morrow by Warranty Deed dated October 6, 1993. (Hr'g vol. 1, Ex. 1, Feb. 28, 2004, R.E. at 114.) The parents conveyed the property just five days after a traffic accident in which Gocher Morrow was cited for failure to yield the right of way. (Hr'g vol. 1, Miss. Uniform Accident Report, Ex. 7, Feb. 28, 2004.)¹ Willie L. Lofton, the driver of the other vehicle in this accident, was killed. Id. Phillip Morrow testified that his parents conveyed the property to him to avoid the risk that the land might be lost as a result of litigation resulting from the accident. (Hr'g vol. 1 at 62, Feb. 28, 2004.) Phillip Morrow also testified a second time during this same hearing that the auto accident in which his father received his traffic citation occurred just before this property was deeded to him in 1993. Id. at 74. The Trial Court recited the fact that the October 6, 1993, Deed was executed five days after the traffic accident and stated that the parents "obviously, feared that they would lose the subject property as a result of litigation by the wrongful death heirs of a deceased motorist. (Hr'g vol. 7 at 5, May 11, 2004.)

On March 23, 1996, Gocher and Reba Morrow conveyed the same property to Phillip Morrow and retained for themselves a life estate. (Hr'g vol. 1, Ex. 3, Feb. 28, 2004, R.E. at 118-19.) On April 22, 1996, Phillip Morrow, in turn, reconveyed this

¹ Phillip Morrow incorrectly argues in his Brief that the only evidence of the accident was offered during a proffer. (Phillip Morrow's Br. at 2, footnote 2.) To the contrary, the court accepted into evidence the Uniform Accident Report. (Hr'g at 60, Feb. 28, 2004.) The Uniform Accident Report was previously marked for identification but was later received into evidence. Id.

Moreover, Phillip Morrow testified, over the objection of Phillip Morrow's counsel, that the automobile accident occurred just before the October 6, 1993, Deed. (Consolidated Hr'g at 74, Feb. 28, 2004.)

property back to his parents. (Hr'g vol. 1, Ex. 2, Feb. 28, 2004, R.E. 116-17.) Based on the dates of these Deeds, the most recent Deed was from Phillip Morrow to his parents and, accordingly, they owned the property at the time of their death. These Deeds were prepared by Nell May, an attorney in Fulton, Mississippi. (Hr'g vol. 1 at 33, Feb. 28, 2004.)

Phillip Morrow testified that he had intended to reconvey the property back to his parents so they could, in turn, convey it back to him while reserving a life estate. Id. at 32. He explained that he had no involvement in the preparation of these Deeds and that he did not pay the attorney's fees for preparing these documents. Id. at 37.

During cross-examination by the undersigned counsel, Phillip Morrow conceded that he does not know when he signed the Deed re-conveying the property back to his parents, nor does he know which of the 1996 Deeds were executed first. The following is his testimony on these points:

Q. Mr. Morrow, I just handed you Exhibit No. 2.² And tell me if I am correct, but isn't that the Deed from you to your parents dated with the date of April 22, 1996?

A. I'm still reading.

Q. Okay.

A. What did you say, from me to my parents?

Q. Right.

A. Yes, sir.

Q. And it's got a date of April 22, 1996; is that correct?

A. You said which date?

Q. April 22, 1996?

² Exhibit No. 2 was the April 22, 1996, Deed from Phillip Morrow re-conveying the property to his parents.

- A. Yes, sir.
- Q. Now, you don't recall when you signed that Deed, do you?
- A. No, sir.
- Q. There is no reason you couldn't go to her office or to Nell May's office in April of 1996 to sign this Deed is there?
- A. Not that I'm aware of.
- Q. And you don't know which of these two Deeds marked as Exhibits 2 and 3³ was signed first, do you?
- A. No, sir, I do not.

Id. at 69-70.

During further cross-examination, Phillip Morrow conceded that his pleadings did not specify which of the 1996 Deeds⁴ was executed first and admitted that he had no proof as to which of the two Deeds was the first to be executed. He testified:

- Q. In your Amended Complaint to Quiet and Confirm Title, and I will be glad to present this complaint to you and read it line for line if we have to, but in your Complaint you have alleged that either your Deed to your parents should be reformed of this Court to put a new correct date on it or either their Deed to you should be reformed to put a correct date on it, one of the two. Do you understand that?
- A. Yeah. Yes, sir.
- Q. Okay that's what you're asking the Court to do but you have absolutely zero proof to present us today as to which day for either Deed is the correct date?
- A. No, sir, I do not.

³ Exhibit No. 3 was the March 23, 1996, Deed from the parents to Phillip Morrow reserving a life estate.

⁴ Exhibits 2 and 3.

Q. Not only do you not have any personal knowledge or proof in that regard, you don't know of anyone who does?

A. Is that a question?

Q. Yes, sir.

A. No, I do not. Id. at 79-80.

A few minutes later Phillip Morrow reiterated that he does not know which of the two 1996 Deeds was executed first. He said:

Q. In other words, you don't know which of the two 1996 Deeds was signed first?

A. No, sir, I do not.

Phillip Morrow did not provide any instructions to the attorney, Nell May, who prepared the Deeds. Id. at 81. Phillip Morrow also conceded that he does not know what instructions his parents provided to Nell May because he was not present. Id. at 71. After this property was originally deeded to him in 1993, Phillip Morrow testified that both he and his father continued to work the farm together and their joint efforts created farm proceeds used to pay a Promissory Note secured by the farm. Id. at 77-78. The Promissory Note secured by the farm was not transferred to Phillip Morrow after his parents deeded him the farm in 1993. Id. at 78.

After the Trial Court determined that the property was owned by the three brothers, Phillip Morrow asked the Court during a hearing on October 23, 2006, to impress an equitable lien in his behalf on the property. (Hr'g vol. 2, 143-237, Oct. 23, 2006.) Phillip Morrow claimed he is entitled to a reimbursement of \$527,000.00 for his expenditures and labor associated with the farm. Id. at 169. He testified that since 1988, he had made several expenditures to benefit the farm and that he had provided farm labor that was valued at \$10.00 to \$12.00 per hour. Id. at 156-69. Phillip Morrow

also testified that, after his mother died, trees were planted on the farm. Id. at 200. A timber appraiser, Mike Williams, testified that the value of the timber was \$23,051.17. Id. at 148.

During cross-examination, Phillip Morrow conceded that the farm expenses identified in his annual tax returns were significantly less than the expenses for which he was seeking reimbursement. Id. 201. He further conceded that he claimed an operating loss for the farm in 1989 through 2005 with the exception of small profits in 1994, 1997 and 1999. Id. at 204-05. These losses totaled \$140,181.00, Id., which he claimed as deductions on his tax returns. Id. at 208. Furthermore, Phillip Morrow claimed as a deduction on his tax returns the interest that he paid on the loan secured by the farm. Id. He also received more than \$30,000.00 in federal farm payments for the trees between 2000 and 2005. Id. at 206-07. Finally, Phillip Morrow received all the income from the crops and livestock raised on the farm and allowed his son to live in a house on the farm for the previous year without paying rent. Id. at 209. Finally, Phillip Morrow also enjoyed homestead exemption on this property after his parent's death in 2000. Id. at 210-11.

SUMMARY OF ARGUMENTS

Phillip Morrow suggested to the Trial Court a narrative of why he thought one of the subject Deeds contained an erroneous date. That narrative, however plausible it might seem, was not supported by any meaningful proof. Accordingly, the Trial Court had no alternative but to refuse to reform the Deeds. Phillip Morrow failed to support his scenario by meeting either of two very demanding burdens of proof: (a) He did not prove beyond a reasonable doubt that one or more of the Deeds should be reformed because of a mutual mistake; and (b) He did not prove by clear and convincing

evidence that an Acknowledgement on one of the Deeds contained a defect as to the date of execution and delivery. Although Phillip Morrow's case depended on his parents' Deed to him being executed after his conveyance to his parents, Phillip Morrow candidly admitted during cross-examination that he did not know which of these Deeds was the most recently executed. Moreover, he failed to offer any proof – much less the very exacting levels of proof necessary to prove a mutual mistake or a defect in the Acknowledgement – to show which of the Deeds was the most recently executed. In the absence of such proof, the Trial Court had no choice but to deny Phillip Morrow's request to reform one of the Deeds.

Phillip Morrow also failed to demonstrate the extraordinary circumstances under which the After-Acquired Title Doctrine could be invoked to vest exclusive title in him. When the parents executed the March 23, 1996, Deed conveying the property to Phillip Morrow, he had actual knowledge that he already owned the property and cannot, for that reason, claim that his parents were equitably estopped from denying ownership of the property when he reconveyed the land to them a month later. Additionally, this Doctrine cannot be invoked when grantees, such as Phillip Morrow, voluntarily reconvey the property to a grantor. Simply put, Phillip Morrow did not qualify as an unwitting grantee entitled to the extraordinary equitable relief under this Doctrine.

Phillip Morrow also misinterprets Mississippi property law when arguing that delivery of the March 23, 1996, Deed, from his parents was delayed until it was recorded in the Itawamba County Chancery Clerk's office on April 23, 1996 – one day after his reconveyance of the same property to his parents. Contrary to Phillip Morrow's arguments, the recording of a deed does not establish the date of delivery. Rather, it simply creates a presumption that delivery has occurred at some point. Phillip Morrow

failed to produce any proof that his parents intended to delay the delivery of the March 23, 1996, Deed to him until after he had reconveyed the property to his parents.

Finally, Phillip Morrow sought, as an alternate relief, an equitable lien against the property. This argument failed as his brothers were not unjustly enriched as a result of his claimed expenditures and labor, which were highly exaggerated. The overwhelming majority of the labor and claimed expenditures benefited only the farming operations, as opposed to the land that the brothers jointly owned after the parents' deaths. Additionally, Phillip Morrow exclusively derived financial benefits from this property during a time in which he had no interest or a very limited interest in the property. For example, he received all the federal subsidies for timber grown on the property; monopolized the income from the crops and livestock raised on the property; and claimed exclusive tax benefits from the property ranging from income tax deductions to homestead exemption. Phillip Morrow failed to meet the evidentiary and legal requirements to claim an equitable lien.

ARGUMENTS AND AUTHORITIES

I. This Court applies the substantial/manifest error standard for reviewing the Trial Court's decrees.

The Mississippi Supreme Court has adopted a deferential standard for reviewing appeals from Chancery Court. An appeals court should not disturb a chancellor's opinion when it is "supported by substantial evidence unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied." Olive v. McNeal, 47 So. 3d 735, 739 (Miss. Ct. App. 2010). "A 'finding of fact' is 'clearly erroneous' when, although there is evidence to support it, the reviewing court

on the entire evidence is left with the definite and firm conviction that a mistake has been made." U.S. Fidelity & Guar. v. Estate of Francis, 825 So. 2d 38, 44 (Miss. 2002).

In this case, the Trial Court's fact-finding was exemplary. Following a trial during which it heard testimony and reviewed numerous exhibits, the Trial Court recited the factual and procedural history in painstaking detail in a 24-page Opinion in which it concluded that Phillip Morrow had not proven that he was entitled to have the subject property quieted and confirmed in his name. Moreover, the Trial Court considered detailed testimony and voluminous documentary evidence by Phillip Morrow in support of his alternative claim for an equitable lien. A review of the evidence before the Trial Court does not support a "definite and firm conviction that a mistake has been made" so as to justify a reversal under this court's limited review of chancellor's factual findings.

Just as the Trial Court's factual findings cannot be assailed, its application of the law to the facts is also beyond reproach. The Trial Court's Opinion recites in detail the legal standards to be applied to Phillip Morrow's case. As will be explained, the Trial Court properly applied the law to its factual findings.

II. Phillip Morrow failed to meet his burden of proof for reformation of Deeds.

Phillip Morrow complains that one of the two 1996 Deeds had an erroneous date and it should be reformed. The parents conveyed to Phillip Morrow the property, subject to a life estate, by Warranty Deed dated March 23, 1996, while Phillip Morrow reconveyed the property to his parents by a Warranty Deed dated April 22, 1996. Phillip Morrow's Complaint does not allege which of these two Deeds contains an erroneous date, although he presumably alleges that the Deed from his parents to himself was the most recent instrument. (Phillip Morrow's Compl. to Quiet and Confirm Title Tr. 223-27.)

The vague allegations in Phillip Morrow's Complaint to Quiet and Confirm Title is symptomatic of the dearth of proof in support of his request to reform the Deeds.

Black letter law in Mississippi authorizes the reformation of instruments, including deeds, to reflect the true intention of the parties when either (a) the contract contains an error because of a mutual mistake by the parties or (b) the error was caused by a unilateral mistake of one party accompanied by evidence of some sort of fraud, deception or other bad faith activity by the other party that prevented or hindered the mistaken party in discovering the mistake. E.g., Brown v. Chapman, 809 So. 2d 772, 774 (Miss. Ct. App. 2002) (citing McCoy v. McCoy, 611 So. 2d 957, 961 (Miss. 1992)).

Phillip Morrow failed to allege in his Complaint any fraud by his parents, nor did he offer any proof of fraud. Accordingly, he presumably seeks to reform the Deeds based upon a mistake by his parents and him or, alternatively, a mistake by the attorney who prepared the Deeds. Id. (failure to allege fraud as required by Rule 9(b) of the M.R.C.P. results in an analysis under the mutual mistake theory).

Phillip Morrow was required to climb a very steep evidentiary mountain in his quest to reform one of the Deeds as a mutual mistake "must be proven beyond a reasonable doubt." Wright v. O'Daniel, 58 So. 2d 694, 700 (Miss. Ct. App. 2011). Phillip Morrow offered the Trial Court what he undoubtedly considered a plausible explanation of why his parents' Deed to him should have been the most recent instrument, but an unsubstantiated scenario, with barely any supporting proof, falls far short of the very difficult "beyond a reasonable doubt" burden of proof. "Reasonable doubt" may arise from evidence or, as in this case, a lack of evidence in suits to reform deeds. McCoy v. McCoy, 611 So. 2d 957, 960 (Miss. 1992).

Phillip Morrow theorized that his parents wanted him to own the property while reserving a life estate to minimize his property taxes, but this intent was foiled by a mistake in one or more of the Deeds. Phillip Morrow, however, failed to present the most elementary proof of a mistake. For example, Phillip Morrow's entire case revolved around which of the 1996 Deeds was executed most recently. Yet, Phillip Morrow acknowledged that he did not know which was executed most recently during cross-examination:

Q. And you don't know which of these two Deeds marked as Exhibits 2⁵ and 3⁶ was signed first, do you?

A. No, sir, I do not. Id. at 69-70.

Phillip Morrow again acknowledged this gaping hole in his proof in further cross-examination:

Q. In your Amended Complaint to Quiet and Confirm Title, and I will be glad to present this Complaint to you and read it line for line if we have to, that in your Complaint you have alleged that either your Deed to your parents should be reformed of this Court to put a new, correct date or either their Deed to you should be reformed to put a correct date on it, one of the two. Do you understand that?

A. Yeah. Yes, sir.

Q. Okay that's what you're asking the Court to do but you have absolutely zero proof to present us today as to which date for either Deed is the correct date?

A. No, sir, I do not.

⁵ Exhibit 2 was the April 22, 1996, Deed from Phillip Morrow re-conveying the property to his parents.

⁶ Exhibit 3 was the March 23, 1996, Deed from the parents to Phillip Morrow reserving a life estate.

Q. Not only do you not have any personal knowledge or proof in that regard, you don't know of anyone who does?

A. Is that a question?

Q. Yes, sir.

A. No, I do not. Id. at 79-80.

Phillip Morrow further testified that he had no knowledge as to what instructions his parents provided the attorney, Nell May, when they asked her to prepare these Deeds. Id. at 81. Consequently, he failed to provide any proof whatsoever that either of these Deeds failed to reflect the intentions of his parents. Significantly, he did not call as a witness either Nell May or any of her staff, nor did he offer into evidence any documents from Nell May's office that might demonstrate the dates on which the 1996 Deeds were executed.

In refusing to reform the Deeds, the Trial Court relied on the absence of supporting proof. It stated:

No proof was presented to this court to show that either of the dates of the 1996 Deeds were incorrect. Neither Nell May nor any of her staff was called as a witness. Phillip Morrow testified that he did not know the dates on which either 1996 Deed is recorded – or executed, excuse me, nor did he know which of the Deeds was executed first.

(Hr'g vol. 7 at 6-7, May 11, 2004, R.E. at 23-24.)

The Trial Court again noted that Phillip Morrow fell woefully short of proving a mutual mistake beyond a reasonable doubt. It stated:

Suffice it to say here, this Court does not find that there was sufficient proof presented to it to reform the Deed in question. The allegation made that it was probably and possibly a scrivener's error at one point in the date. There was no proof presented to me to that effect. And the Court cannot presume upon the proof. Id. at 21, R.E. at 38.

Both the Mississippi Supreme Court and the Court of Appeals have refused to reform deeds based on mutual mistake when plaintiffs submitted far more compelling evidence than was submitted by Phillip Morrow. For example, proof was insufficient where there was no testimony as to what the grantor and grantee said to one another. McCoy, 611 So. 2d 961. In the absence of testimony concerning statements by the grantor and grantee, the best evidence is the language in the unambiguous deed itself. Id. In the case before this Court, the dates on the Deeds are unambiguous and should be taken as truthful. Phillip Morrow conceded during cross-examination that he does not know what instructions his parents provided the attorney before she prepared the disputed Deeds. Accordingly, Phillip Morrow failed to present any proof that his parents' attorney failed to follow the instructions of his parents. In Holliman v. Charles L. Cherry & Associates, Inc., 569 So. 2d 1139 (Miss. 1990), the grantee presented far more proof of a mutual mistake than did Phillip Morrow, yet the Supreme Court found that the grantee failed to prove a mutual mistake beyond a reasonable doubt. Id. at 1146. For instance, the grantees testified that the grantor negotiated only with them to sell the property; the grantor assured them that they were receiving all the land he owned; and the grantees paid the grantor for the property a year before they received the allegedly erroneous deed. Id. Such proof was insufficient to prove beyond a reasonable doubt that the deed did not describe all of the properties the grantees claimed they had acquired from the grantor. Id.

Phillip Morrow simply offered the Court what he considered a reasonable explanation why the dates on the Deeds must be in error without any supporting proof of a mistake. An unsubstantiated narrative, no matter how plausible, does not amount to proof beyond a reasonable doubt – the highest standard imposed by law. This is

especially true when proof showed a motive for the parents to convey the property to Phillip Morrow only temporarily, until the threat had passed for a lawsuit by the wrongful death heirs of a man who died as a result of the father's negligent operation of a motor vehicle. As the Trial Court succinctly, but accurately, observed in this case, it "cannot presume upon the proof." (Hr'g vol. 7 at 21, May 22, 2004, R.E. at 38.) Phillip Morrow could have rightly fully prevailed only if the Trial Court presumed or, perhaps, more accurately, speculated as to what happened.

III. Phillip Morrow failed to prove the Acknowledgement on the Deed contained an error.

The Deed from the parents to Phillip Morrow is dated March 23, 1996, although it was recorded in the land records on April 23, 1996. The Deed re-conveying the property from Phillip Morrow to his parents is dated April 22, 1996, as the word March is interlineated and replaced with the hand-written word "April." The parents' attorney, Nell May, notarized the signatures on both of these Deeds. Phillip Morrow can prevail only if he can prove that one of these Acknowledgments contains an error as to the date and that the most recent Deed was the conveyance from his parents to him. Phillip Morrow offered absolutely no proof as to any mistake by Nell May in acknowledging these Deeds other than his general testimony that his parents wished to retain a life estate during their lifetime. Indeed, he conceded that he did not know which Deed was the most recent and presented no proof of any scrivener's error or other mistake by Nell May or one of her employees.

As with his claim for reformation, Phillip Morrow faces a very difficult hurdle in proving that an acknowledgement on a deed is defective by reason of having an incorrect date. "[W]here a deed is properly acknowledged, the instrument is presumed to be authentic because the certificate of acknowledgement imports verity and

presumptively states the truth. This presumption can be overcome only by clear and convincing evidence." Thompson v. Shell Western E & P, Inc., 607 So. 2d 37, 40 (Miss. 1992) (emphasis added).

Phillip Morrow offered no proof, much less clear and convincing evidence, to overcome the presumption that the dates in the Acknowledgments are correct. For instance, he failed to call Nell May or any of her employees as witnesses to testify as to the directions given them, nor did he offer any documentary evidence from Nell May's office that contradicts the dates contained in the Acknowledgments. His proof consisted only of his vague intention in 1996 to avoid taxes through his parents' retention of a life estate. That might qualify as a believable explanation for the exchange of Deeds, but it hardly qualifies as clear and convincing evidence sufficient to overcome the presumptive truth in the Acknowledgments.

A factually similar case is Hughes v. Pontotoc County, 242 So. 2d 438 (1971). In Hughes, the appellant was disappointed in the Trial Court's refusal to find that a deed was executed and delivered before October 3, 1961 – the date on which the acknowledgement to the deed states that the instrument was signed and delivered. Id. at 440. The Court found that the date on the acknowledgement could not be overcome by testimony by the appellant's wife that the deed was ready for delivery on October 2, 1961, when she reviewed it in the chancery clerk's office. Id. In Hughes, the court found that the date of execution included in the acknowledgment created a presumption that is very difficult to overcome. It stated:

'On appeal to this Court, the Appellant, Grantee on the Deed, contends that the Chancellor did not give proper evidentiary weight to the strong presumption of the jurat of the attesting officer in the Deed. It is true that there is a presumption that a Certificate of Acknowledgment states the trust; moreover, the introduction of a properly acknowledged

deed into evidence establishes a prima facie case as such deed is genuine. Such an acknowledgement can only be overthrown when the evidence is so clear, strong and convincing as to exclude all reasonable controversy as to the falsity of the certificate.' Id. (quoting Arnold v. Byrd, 223 So2d 410, 411 (Miss. 1969).

In Hughes, the Court continued:

Indulging the presumption that a certificate of acknowledgment states the truth and can only be overthrown by evidence so clear, strong and convincing as to exclude all reasonable controversy as to its falsity, we cannot state that the Chancellor was wrong in his finding that the Deed was delivered on October 3, 1961. As mentioned we do not agree with the Appellant that the evidence was uncontradicted, it being our opinion that there was an issue of fact properly presented to the Chancellor for his consideration and not being manifestly erroneous in his determination we will affirm the Decree in the lower court. Id. 440-41.

Even if one of the Acknowledgments contained an error, it was cured by Phillip Morrow's failure to challenge the Acknowledgement within seven years after the 1996 Deeds were recorded.⁷ Section 89-5-13 of the Mississippi Code cures any defects in acknowledgements for deeds that have been recorded for at least seven years. This statute states:

(1) Concerning an interest in land, whenever an instrument of conveyance (including but not limited to a deed of trust or assignment), release, termination or cancellation which contains a defective acknowledgment has been of record seven (7) years or more in the land records of the county in which the said land is located, the acknowledgement shall be good without regard to the form of the certificate of acknowledgement.

(2) Any such instrument which has been of record for ten (10) years and which bears no acknowledgement shall likewise be treated as if properly acknowledged.

⁷ The 1996 Deeds were recorded on April 22 and 23, 1996. The Complaint to Quiet and Confirm Title was filed on August 18, 2003.

Phillip Morrow argues on page 11 of his Appellant's Brief that the curative scope of Section 89-5-13 should be very limited but failed to offer any authority for his narrow construction. He argues that this statute should only cure those deeds "that were acknowledged but not properly sworn to in the presence of a notary public or other officers" Id. This interpretation contradicts the plain language of the statute, which states that the "acknowledgement shall be good without regard to the form of the certificate of acknowledgement." Had the Mississippi legislature wished to restrict the application of this statute, it would have explicitly done so. Instead, this statute provides that any "acknowledgement" shall be good seven years after recording. This language encompasses any alleged error in the date of an acknowledgement⁸.

IV. Phillip Morrow cannot rely on the After-Acquired Title Doctrine as he neither pleaded it nor disclosed it as an opinion by his expert witness.

Phillip Morrow argues that the property vested in him pursuant to the After-Acquired Title Doctrine. Although the application of this Doctrine is addressed in detail in the following section of this Brief, Phillip Morrow could not rely on this theory because of his failure to provide notice of his intent to use this Doctrine either through his Complaint or through his designations of his expert. Phillip Morrow devoted five pages of his brief to arguments that the Trial Court improperly prohibited him from relying on

⁸ Phillip Morrow cited Goodwin v. McMurphy, 435 So.2d 639 (Miss. 1983) in support of his contention that this statute is to be narrowly construed. In Goodwin, this Court found that the statute did not cure a forged signature of the grantor. Unlike the alleged error by the notary in one of the Deeds before this Court, the forged signature does not involve a defect in the acknowledgement itself. The Mississippi Supreme Court and the Court of Appeals have recognized that this statute, in its present form, is inapplicable only in instances in which forgery is alleged. See also, King v. King, 760 So.2d 830, 835 (Miss. Ct. App. 2000); Greenlee v. Mitchell 607 So.2d 97, 106 (Miss. 1992).

The Supreme Court had declined to allow this statute, in a former incarnation, to cure the complete absence of an acknowledgement in a deed. E.g., Crum v. Butler, 601 So.2d 834, 837 (Miss. 1992). The Mississippi Legislature, however, added subparagraph 2 to Section 89-5-13 in 1999 to cure deeds without any acknowledgements ten years after recording.

this doctrine. (Phillip Morrow's Br. at 18-22.) Phillip Morrow is correct that the Trial Court stated that he failed to properly plead this Doctrine. Notwithstanding this ruling, the Trial Court analyzed this Doctrine and concluded that it did not provide relief to Phillip Morrow under the circumstances of his case. (Hr'g vol. 7 at 22-23, May 11, 2004, R.E. at 39-40.) The Trial Court would, however, have been correct in refusing to consider this Doctrine.

Phillip Morrow attempted to raise this Doctrine through testimony by his designated expert, Thomas McElroy, a licensed attorney in Tupelo, Mississippi. (Vol. 1, Feb. 28, 2004, Hr'g. p. 96) Counsel for Joel and Phillip Morrow objected to the testimony on the twin grounds that a Trial Court does not need the assistance of an expert in interpreting the law and that Phillip Morrow failed to plead this Doctrine or identify it as one of the expert opinions of Thomas McElroy. *Id.* at 96-7.

Phillip Morrow argues that he was not required to affirmatively plead this Doctrine under the authorities of Butler v. City of Eupora, 725 So. 2d 158 (Miss. 1998) and Christian Methodist Episcopal Church v. S & S Construction Company, Inc., 615 So. 2d 568 (Miss. 1993). In the more recent case of Butler, the Supreme Court cites S & S Construction for its authority that the Doctrine did not have to be pleaded by name. Butler, 725 So. 2d at 160. In S & S Construction, this court did, indeed, conclude that equitable estoppel is not required to be specifically named as an affirmative claim or defense if the complaint actually recited all the elements of equitable estoppel. S & S Construction, 615 So. 2d at 572 (S & S's Complaint alleged that it detrimentally changed its position in reliance of a representation by the defendant, which covers all

the elements of equitable estoppel).⁹ Unlike the plaintiff in S & S Construction, Phillip Morrow failed to plead the elements of the After-Acquired Title Doctrine and cannot, therefore, rely on Butler and S & S Construction to justify his failure to affirmatively plead this Doctrine.

The Amended Designation of Expert Witness states that Mr. McElroy would testify as to

Phillip Morrow is the owner of the real property that is allegedly contained within the subject estate and that interpretation of the Deeds in order, as dated, is not logical nor common to ordinary real property conveyances so that title to the subject property was vested in Reba and Gocher Morrow at the time of their death. Tommy McElroy will further testify that he believes, based at least in part on the testimony of Phillip Morrow, that the last two Deeds were prepared at approximately the same time and that the author of the Deeds (or person who dated the Deeds) hand-corrected the pre-printed date on one Deed (marking out 'March' and hand-writing in 'April') and mistakenly failed to make the same correction to the pre-printed date on the second Deed thereby giving the appearance that Reba and Gocher Morrow conveyed the subject property to Phillip Morrow twice before Phillip Morrow conveyed the property to Reba and Gocher Morrow. Further, he will testify that the second Deed from Reba and Gocher Morrow to Phillip Morrow vested title to the subject property, reserving a life estate unto themselves in Phillip Morrow.

(Vol. 2 at 244-45.)

Phillip Morrow struggles mightily in his brief to argue that this designation of expert placed his brothers on notice that Mr. McElroy would testify that the After-Acquired Title Doctrine vested title in Phillip Morrow. This interpretation of the designation of expert strains credibility, to say the least. The designation reveals only that Mr. McElroy proposed to testify that a scrivener's error made it appear that the most

⁹ As will be explained in the following section, the After-Acquired Title Doctrine is a hybrid of equitable estoppel.

recent 1996 Deed was executed by Phillip Morrow when, in fact, the most recent was actually executed by the parents. The After-Acquired Title Doctrine is a theory separate and apart from the scrivener's error identified in the Amended Designation of Expert. A Trial Court can properly exclude expert testimony "on a subject matter different from the subject matter" identified in the designation of expert. Canadian National/Illinois Central R. Co. v. Hall, 953 So. 2d 1084, 1097 (Miss. 2007). A Trial Court would commit reversible error by admitting expert testimony supporting an additional theory of plaintiff's injury that was not revealed during discovery. Coltharp v. Carnesale, 733 So. 2d 780, 786 (Miss. 1990).

When counsel for Joel and Ron Morrow objected to Thomas McElroy's proposed testimony concerning the After-Acquired Title Doctrine, the Trial Court sustained the objection based upon its review of the file, including pleadings and designations of experts by Phillip Morrow. The Trial Court stated: "The matter of after-acquired title has not been brought to the attention, that I can find anywhere in these files, except in your trial brief that you submitted to me this morning, copies of which were furnished to opposing counsel at that time, you stated earlier in the record." (Hr'g Tr. vol. 1, Feb. 28, 2004.) The Trial Court pointed out, however, that this Doctrine would be reviewed by the court without the assistance of expert testimony as such question is a matter of law. Id. Accordingly, the court did review this Doctrine and concluded that it had no application to the facts of this case.

V. The After-Acquired Title Doctrine does not apply to vest title in Phillip Morrow even if it were properly considered.

Phillip Morrow argues in his Brief that the Trial Court refused to allow him to assert the After-Acquired Title Doctrine in support of his claim that this Doctrine vested

title in himself. Specifically, Phillip Morrow argues that the March 23, 1996, Deed from the parents to him attempted to convey property no longer owned by the parents. When Phillip Morrow re-conveyed this property back to his parents on April 22, 1996, Phillip Morrow argued that this Doctrine vested the property in Phillip Morrow. Phillip Morrow asserts in his Brief that the Trial Court refused to consider this Doctrine because of his failure to plead it. The Trial Court did, in fact, note that Phillip Morrow failed to plead it or to identify it as a subject area for his expert witness. (Hr'g vol. 7 at 13-18, May 11, 2004, R.E. at 30-35.) The court should not have considered this Doctrine because of Phillip Morrow's failure to plead it or identify it as subject area for expert testimony. Nonetheless, the court did consider this Doctrine and concluded that it provided Phillip Morrow no relief.

In its verbal opinion rendered on May 11, 2004, the Trial Court explicitly considered the application of this Doctrine notwithstanding its statement earlier during the same hearing that Phillip Morrow failed to properly plead this Doctrine under Rule 8 of the Mississippi Rules of Civil Procedure. The Trial Court recited and adopted excerpts from American Jurisprudence explaining why this Doctrine did not apply under the circumstances of this case, and pointed to the absence of supporting authorities by Phillip Morrow to apply the Doctrine. (Hr'g vol. 7 at 22-23, May 11, 2004, R.E. at 39-40.) The Trial Court concluded: "Suffice it to state here, gentlemen, this court simply finds that the Doctrine of After-Acquired Title does not apply here in this situation for the reasons heretofore noted" Id. at 23, R.E. at 40.

Phillip Morrow seeks to apply this Doctrine to the following scenario: The parents attempted to convey to Phillip Morrow property in the March 23, 1996, Deed that they no longer owned. When Phillip Morrow re-conveyed this property back to his parents

on April 22, 1996, he argues that the Doctrine vested the property in Phillip Morrow. In essence, Phillip Morrow argues that he acquired title to the subject property by conveying it from himself back to his parents. Phillip Morrow wants to perform the magic trick of acquiring property by giving it away. Such an application of the Doctrine would defy the equitable premise upon which it rests and, moreover, would be illogical.

The After-Acquired Title Doctrine can be summarized as follows:

If a grantor having no title to land purports to convey it by a warranty deed, he will be estopped to show that at the time of the deed he had no title to convey. If he later acquires the title, his after-acquired title will pass to the grantee without further conveyance by way of estoppel.

Butler v. City of Eupora, 725 So. 2d 158, 160 (Miss. 1998).

This Doctrine is based on equitable principles that work this way: A grantor is estopped from denying that he conveyed to an unwitting grantee property in which he had no interest at the time of conveyance but for which he acquired an interest subsequent to the conveyance. The Doctrine rests upon equitable estoppel, which

... precludes a party from denying a material fact which he has previously induced another to rely upon, whereby the second party changed his position in such a way that he would suffer injury if denial was allowed. Estoppel is based upon 'public policy, fair dealing, good faith and justice.' It would be substantially unfair to allow a party to deny what he has previously induced another party to believe and take action on, equitable estoppel may be enforced." Id.

The Mississippi Supreme Court has described equitable estoppel – the theory on which this Doctrine rests – as "an extraordinary remedy" that "should be applied with caution." Kimball Glass Co. Residential Center, Inc. v. Shanks, 64 So. 3d 941, 947 (Miss. 2011). Phillip Morrow failed to prove the extraordinary circumstances under which this remedy should be granted. Specifically, two factors prevent the application of the Doctrine in this case: (1) Phillip Morrow seeks to invoke this Doctrine because of

his affirmative action in conveying the property to his parents; and (2) Phillip Morrow was aware when his parents conveyed it to him through the March 23, 1996, Deed, that he already owned the tract.

(i) Phillip Morrow cannot invoke the Doctrine by conveying the property back to his parents.

Equity does not demand the application of the Doctrine in this case. Phillip Morrow does not seek to invoke the Doctrine as a result of the parents/grantors' acquisition of the property from some third party after they had purported to deed it to Phillip Morrow. Instead, Phillip Morrow claims the benefit of this Doctrine through an affirmative action by himself, namely Phillip Morrow's re-conveyance of the subject property to his parents. Through a supreme act of irony, he wishes to simultaneously acquire and convey property through his Deed to his parents. Such a reconveyance by Phillip Morrow is a voluntary relinquishment of title by Phillip Morrow. By claiming the protection of this Doctrine, Phillip Morrow seeks to invalidate his own conveyance back to his parents. He was not the victim of some misconduct of his parents so as to be entitled to claim equitable relief¹⁰.

American Jurisprudence has reviewed cases dealing with the Doctrine and concluded that it has no application when original grantors (parents) subsequently acquire title from the original grantee (Phillip Morrow). It states: "Generally, if the grantor subsequently acquires title, which he has purported to convey, from other than

¹⁰ It is important that this Court distinguish between Phillip Morrow's request for equitable relief consisting of reformation of the Deed and the equitable relief inherent in the After-Acquired Title Doctrine. The equity involved in reforming a deed to reflect the true intent of the parties is a different form of equitable relief than the estoppel requested by unwitting purchasers of property from a grantor who subsequently acquired the property. These are two distinct forms of equitable relief, and the Court should refrain from relying on any claimed mutual mistake in preparation of the Deeds to satisfy the equitable basis for the After-Acquired Title Doctrine.

the grantee himself or one claiming under or deriving title from him, it makes no difference, in respect to the application of the After-Acquired Title Rule how the grantor acquires this belated title, rather through enforcement of a mortgage, enforcement of a vendor's lien, by purchase on foreclosure of a tax lien or on an execution sale to satisfy a judgment, or otherwise." 23 Am. Jur. 2d Deeds § 279 (emphasis added).

American Jurisprudence reaffirms this point in former Section 344, Deeds, entitled "Title acquired from source compatible with deed, or from grantee or one claiming under him." It states in pertinent part: "A grantor may notwithstanding his warranty, set up against his grantee, or against those who hold his grantee's title, a title subsequently acquired by himself by the disseisin of his original grantee and those claiming under him, or a title subsequently acquired by purchase from one who had received title to the property from the grantee by operation of a court decree, such as a decree of divorce." 23 Am. Jur. 2d Deeds § 344. As stated in this quote, a grantor, such as the parents, are not estopped from denying they conveyed property to the grantee, such as Phillip Morrow, if the grantors ultimately obtained title from the grantee or those claiming through the grantee. Accordingly, this prohibition on the application of this Doctrine specifically applies to the case before this Court. The Trial Court found this excerpt from American Jurisprudence persuasive. (Hr'g vol. 7, 22-23, May 11, 2004, R.E. 39-40.)

In his brief, Phillip Morrow cites Garner v. Garner, 78 So. 623 (Miss. 1918) for the proposition that it is irrelevant how a grantor subsequently acquires title for this Doctrine to apply. In support of his very expansive interpretation of Garner, Phillip Morrow quotes one-half of one sentence in dicta. Specifically, his brief contains the

following quotation: "It makes no difference how the grantor acquires his belated title" (Phillip Morrow's Br. at 17.) (quoting Garner, 78 So. at 624.)

The entire sentence from which Phillip Morrow lifts a few words reads: "It makes no difference how the grantor acquires his belated title; a title through an outstanding deed of trust operates in favor of the grantee." Id. The words omitted by Phillip Morrow show that the grantor, in Garner, acquired the property through a deed of trust, as opposed to a conveyance directly from the grantee. Contrary to the interpretation of Garner by Phillip Morrow, this case does not require the application of this Doctrine in all instances when the grantor acquires title subsequent to the grantor's conveyance to the grantee. Unlike the case before this Court, the grantee¹¹ in Garner did not affirmatively convey the property back to the grantor and then claim he was the victim of some inequitable conduct. Accordingly, Garner does not contradict American Jurisprudence's summary of law concluding that a grantee cannot invoke this Doctrine when he re-conveys the property to the grantor.

(ii) Phillip Morrow was aware that he owned the property when his parents conveyed it to him through the March 23, 1996, Deed.

The Doctrine is based upon the equitable premise that an uninformed grantee should not be penalized if the grantor did not own the property at the time of conveyance yet subsequently acquired it. It would be inequitable for the grantor to claim that he did not convey it to the innocent grantee. On the other hand, a grantee cannot rely on the Doctrine if he was "misled through his own want of reasonable care and circumspection [as] estoppel is denied where the party claiming it was put on inquiry as to the truth and had available means for ascertaining it." Buchanan v.

¹¹ A child of the deceased grantee was actually a party to this litigation.

Stenson, 335 So. 2d 912, 914 (Miss. 1976) (quoting 28 Am. Jur. 2d Estoppel and Waiver § 80 (1966)). Likewise, the Doctrine will not be applied "where the parties are equally well informed 'as to essential facts, or where the means of knowledge were equally open to them.'" Id. (quoting Crooker v. Hollingsworth, 46 So. 2d 541 (Miss. 1950)). Phillip Morrow had actual knowledge that he owned the property when the March 23, 1996, Deed was executed. Accordingly, he may not invoke this Doctrine under the express language of Buchanan.

The Mississippi Supreme Court's interpretation of the Doctrine in Buchanan is consistent with American Jurisprudence's summary of the theory. Just as Buchanan explains that a grantee cannot rely on this Doctrine when he knew or should have known that the grantor did not own the property, American Jurisprudence recites law showing that a grantee cannot claim the benefit of the theory if the deed revealed the grantor did not own the property. Section 287 of Deeds, Am. Jur. 2d states in part: "In order for a deed to operate as an estoppel against an assertion by a grantor of an after-acquired title, it must not appear on the face thereof that, at the time of its execution, the subsequently acquired title was outstanding in third parties, and was not in the grantor; in other words, the truth must not appear on the face of the instrument." Phillip Morrow did not have to rely on the language in the Deed from his parents dated March 23, 1996, as he had actual knowledge of his ownership at that time. Phillip Morrow cannot claim that this conveyance was inequitable so as to estop his parents from claiming the tract when he re-conveyed it to them in the April 22, 1996, Deed.

This limitation on the Doctrine is consistent with the elements of equitable estoppel under Mississippi law. Equitable estoppel, like the After-Acquired Title Doctrine, requires an inducement by the party against whom equitable estoppel is

invoked. The Mississippi Supreme Court has affirmed the necessity of inducement as part of its definition of equitable estoppel:

‘The principle by which a part is precluded from denying any material fact, induced by its words or conduct upon which a person relied, whereby the person changed his position in which a way that injury would be suffered if such denial or contrary assertion was allowed.’

Kimball Glass Co. Residential Center, Inc. v. Shanks, 64 So. 3d 941, 947 (Miss. 2011) (quoting Simmons Housing, Inc. v. Shelton, 36 So. 3d 1283, 1287 (Miss. 2010)).

Phillip Morrow cannot claim that he was induced by any words or conduct of his parents when they purportedly conveyed the property to him on March 23, 1996, as he knew at that time that he owned the property. Although Phillip Morrow may claim some sympathy because of the unproven mistake in the Deeds, his parents are not guilty of any inequitable conduct that would entitle Phillip Morrow to invoke equitable estoppel.

VI. Phillip Morrow failed to prove that the 1996 Deed from his parents was the most recently delivered.

Phillip Morrow argues in his Brief that the two 1996 Deeds were delivered upon the dates in which they were recorded in the land records of Itawamba County, Mississippi. Accordingly, he argues that the most recently delivered Deed was the March 23, 1996, Deed from his parents because it was recorded on April 23, 1996, in the Itawamba County Chancery Clerk’s office. The April 22, 1996, Deed from Phillip Morrow to his parents was recorded a day earlier, on April 22, 1996.

Phillip Morrow’s argument suffers from two fatal flaws:

- (1) He misinterprets the significance of recordation; and

(2) He failed to offer any proof in support of his claim that there was any delay in delivery of the parents' Deed to him.

Phillip Morrow is correct that a Deed is effective upon delivery, but he misstates the law in claiming that the recordation of the Deed in land records "is equivalent to delivery." (Appellant's Br. at 10.) The recording of a deed does not establish the date of delivery. Rather, it simply creates a presumption that delivery has occurred at some point. Estate of Hardy, 805 So. 2d 515, 518 (Miss. 2002). The date of recordation is not necessarily the same date on which delivery occurs. Indeed, a deed may be recorded, yet the presumption of delivery caused by recording may still be overcome by proof that the deed was never delivered. Martin v. Adams, 62 So. 2d 328-29 (Miss. 1953).

Phillip Morrow claims that the recordation of a deed is "equivalent to delivery" under the authority of Wilbourn v. Wilbourn, 37 So. 2d 256, 258-59 (Miss. 1948). In Wilbourn, the court merely recited the rule that recordation reflects the intention of the grantor to deliver the deed – another variation of the maxim that recordation creates a presumption of delivery. Id. Neither Wilbourn nor any of the other cases cited by Phillip Morrow state that the date of delivery is determined by the date on which the deed is recorded.

The Acknowledgement on the Deed from Phillip Morrow's parents states:

Personally appeared before me the undersigned Notary Public in and for said county and state the within named Gocher E. Morrow, and wife, Reba E. Sparks Morrow, who acknowledged that they each signed, sealed and delivered the foregoing Warranty Deed on the date and year therein mentioned for the purposes therein expressed as their act and deed.

Given under my hand and seal, this the 23rd day of March, 1996.

As shown above, the Acknowledgement executed by Nell May states that the Deed from the parents was delivered on the date of the Deed, namely March 23, 1996. As explained in Section III, the Acknowledgment is presumed to state the truth and this presumption can only be overcome by clear and convincing evidence.

Phillip Morrow offered no proof whatsoever, much less clear and convincing evidence, that the Deed from his parents was not delivered on March 23, 1996 or that it remained within their control until recording on April 23, 1996. No testimony was elicited as to the disposition or location of this Deed between its execution on March 23, 1996, and its recording on April 23, 1996. Specifically, no proof was offered as to: (a) who had possession of the Deed at this time; (b) whether Phillip Morrow received or otherwise saw this Deed during this one month interim¹²; (c) who delivered the Deed to the chancery clerk's office for recording; or (d) the instructions given Nell May by the parents as to the disposition of the Deed during this period. Phillip Morrow faced the burden to prove a delay in delivery and failed to meet it. He cannot expect the Trial Court or the reviewing court to make presumptions in his favor.

Phillip Morrow acknowledged during cross-examination that he does not know the instructions his parents provided to Nell May when this Deed was prepared (Vol. 1, Tr. 71), nor does he know of any directions from his parents to Nell May as to when the Deed should be recorded. Id. at 80-81. Moreover, Phillip Morrow did not provide any instructions to Nell May as to when the Deed signed by him should take effect. Id. at 81. He did, however, confirm that he wished for both of the 1996 Deeds to be executed and delivered. Id. at 71.

¹² Phillip Morrow testified that he had not seen the Deed executed by him (Hr'g vol. 1, 38, Feb. 28, 2004), but he offered no testimony as to when he first saw the Deed executed by his parents.

VII. Phillip Morrow is not entitled to an equitable lien as his expenditures and labor did not benefit his brothers.

Phillip Morrow argues that the Trial Court, if it refused to recognize his exclusive ownership, should have, alternatively, impressed an equitable lien on the property for his investment of money and labor. Phillip Morrow claims to have devoted \$527,000.00 in funds and personal labor to subject property. He arbitrarily assigned an hourly rate to his claimed labor over a seventeen-year period without any supporting proof as to the reasonableness of the rate or the actual time he supposedly labored on the farm. (Hr'g Ex. 1, Oct. 23, 2006.) The \$527,000 estimate was seriously discredited. He introduced into evidence a recap sheet summarizing by category all his claimed expenses and labor, but these figures totaled only \$501,010.70, approximately \$26,000 less than he was claiming. (Hr'g Ex. 3, Oct. 23, 2006.) Moreover, Phillip Morrow conceded during cross-examination that the farm expenses identified in his annual tax returns were approximately \$140,000 less than the expenses he was claiming in support for his equitable lien. Id. at 201.

An equitable lien is typically impressed "to reflect an express agreement that the property to be liened was intended to be held as security for the obligation of the promissor" Dudley v. Light, 586 So. 2d 155, 159 (Miss. 1991) (quoting Neyland v. Neyland, 482 So. 2d 228, 230 (Miss. 1986)). The proof is undisputed that Phillip Morrow had no such contractual arrangement with his brothers under which he would retain a lien to this property for his expenses and labor. The absence of such an express agreement helped sway the Trial Court to deny the lien. (Final Judgment, Feb. 15, 2007, R.E. at 15.)

In the context of divorce, courts have, indeed, impressed an equitable lien to deny the unjust enrichment of one spouse who was to retain property that benefited

from expenditures by the other spouse. Dudley, 586 So. 2d at 159. Equitable liens arise from a "recognition of general principles of right and justice" Id. (quoting Neyland v. Neyland, 482 So. 2d 228, 230 (Miss. 1986)). A primary reason for impressing an equitable lien is to "prevent unjust enrichment, i.e., where it would be contrary to equity in good conscience for an individual to retain a property interest acquired at the expense of another." Id. In this case, however, no such unjust enrichment of Phillip Morrow's brothers resulted from the actions of Phillip Morrow for two reasons: (a) the overwhelming majority of the exaggerated expenses claimed by Phillip Morrow did not permanently improve the property so as to enrich Joel Morrow and Ron Morrow; and (b) the uncontroverted evidence was that Phillip Morrow derived exclusive financial benefits from his use and occupation of the farm despite his limited interest in the property.

(i) Almost all of the claimed expenditures did not permanently benefit the property so as to enrich Joel Morrow and Ron Morrow.

The primary reason to impress an equitable lien is to "prevent unjust enrichment." Dudley, 586 So. 2d at 159. Joel Morrow and Ronald Morrow could be enriched, whether unjustly or not, only if expenditures of labor and money by Phillip Morrow contributed to lasting benefits to the property when it came into their possession. That was not the case. Phillip Morrow submitted a Recap Sheet purporting to identify by category his claimed expenses of money and labor totaling \$527,000.00 from 1988 through 2005. (Hr'g Ex. 3, Oct. 23, 2006.) Very few of those expenses permanently improved the land. The biggest expenditure was the \$292,680.00 that he claimed was the value of his labor. That labor did not permanently improve the land but was, instead, designed to generate farm income, all of which Phillip Morrow retained for

himself despite his limited ownership interest. (Hr'g Tr. at 209, Oct. 23, 2006.) He also claimed mileage of \$31,088.40, equipment parts and repairs of \$14,835.00, \$54,865.49 for seed, trees and chemicals, \$8,199.11 for gas, oil and diesel, \$8,400.00 in mowing and weed eating, \$3,373.85 for utilities, \$1,902.51 for homeowners insurance, \$7,449.70 in beaver control, \$7,904.91 in miscellaneous expenses, and \$8,154.51 for his farm loan. (Hr'g Ex. 3, Oct. 23, 2006.) For example, Phillip Morrow supports his claim for an equitable lien through his purchase of two pigs in 1989 (Hr'g vol. 2 at 158, Oct. 23, 2006.) and payment of \$8,154.51 to the Bank of Mississippi to finance his farming operations. Id. at 153. All of these alleged expenses were incurred by Phillip Morrow as part of his farming operations, for which he received all of the income. None of these expenditures permanently benefited the property so as to enrich Ronald Morrow and Joel Morrow, justly or unjustly. These expenditures do not entitle him to an equitable lien.

(ii) Phillip Morrow's exclusive receipt of financial benefits from the property offset any benefits he conferred on the land.

Phillip Morrow claimed to have invested in the farm from 1988 through 2005. During that time, he had no ownership interest from 1988 until his parents conveyed it to him by the October 6, 1993 deed or from his reconveyance of the property to his parents on April 22, 1996 until the death of his father on January 5, 1999. He briefly owned a one-fourth interest from the death of his father until the death of his mother on January 1, 2000, and has owned a one-third interest with his brothers since that date. Accordingly, he owned no interest in the property for eight of the 17 years during which he claims to have invested in the property and limited interest for the remaining six years. Despite his limited interest, Phillip Morrow derived exclusive

financial benefits from the farm without sharing those benefits with his parents or brothers. Even if Phillip Morrow made some contributions to the property that ultimately benefitted his brothers, those benefits were offset by his exclusive financial benefits that he derived from the property. These exclusive financial benefits represent another basis for denying him an equitable lien.

Phillip Morrow's Brief omits the following exclusive financial benefits he derived from his use of the property:

- (a) Phillip Morrow's receipt of the entire \$30,000.00 in federal subsidies for timber grown on the property from 2000 to 2005; Id.
- (b) Phillip Morrow's receipt of all the income from the crops and livestock raised on the farm from 1998 to 2005; Id. at 209.
- (c) Phillip Morrow's deductions on tax returns for farm expenses after his parents died in 1989 and continuing through the date of the hearing on October 23, 2006; Id. at 208.
- (d) Phillip Morrow's tax deductions for interest paid on loan payments to the Federal Land Bank during the same time period; Id.
- (e) Rent-free occupation of the home on the land by Phillip Morrow's son for at least one year; Id. at 209.
- (f) Phillip Morrow's deductions for losses totaling approximately \$140,000.00 on tax returns as a result of farming operations of the property from 1989 through 2005; Id. at 204-05. and
- (g) Phillip Morrow's exclusive homestead exemption on the subject property after his parents' death in 2000. Id. at 210-11.

The chancellor heard all of the proof concerning Phillip Morrow's investment of labor and money in the subject farm and contrasted that to the exclusive benefits that he derived from this property despite a very limited, or even no interest, in the land for most of that time. (Final Judgment, Feb. 15, 2007, R.E. at 15.) Phillip Morrow's investment of labor and money in the subject property was offset by his exclusive benefits derived from the property. Accordingly, neither Joel nor Ron Morrow were unjustly enriched so as to entitle Phillip Morrow to an equitable lien. It should also be pointed out that income from the farm paid the Federal Land Bank loan that his father owed, and Phillip Morrow only contributed toward this loan when the farm income was insufficient. Id. at 162. Significantly, during this time period, his father helped perform labor on the farm, meaning that this father's labor helped generate income used to pay the Federal Land Bank loan. Id. Phillip Morrow offered no proof as to the amount of personal funds that he contributed to the Federal Land Bank loan.

The touchstone of an equitable lien is the presence of unjust enrichment. "Unjust enrichment" exists where the person "sought to be charged is in possession of money or property which in good conscience and justice he should not retain but should deliver to another" Hans v. Hans, 482 So. 2d 1117, 1122 (Miss. 1986) (quoting 66 Am. Jur. 2d Restitution and Implied Contracts § 11 (1973)). Based upon the totality of the facts, justice does not demand that Phillip Morrow be granted an equitable lien on the property. To impress an equitable lien, the chancellor is afforded "broad discretion," and his findings should not be disturbed unless he was "manifestly wrong, clearly erroneous, or an erroneous legal standard was applied." McGee v. McGee, 726 So. 2d 1220, 1224 (Ms. Ct. App. 1998). The Trial Court in this case did not commit such error in exercising its discretion to refrain from impressing a lien.

CONCLUSION

Phillip Morrow fell woefully short of meeting the very exacting burden of proof to show that one or more of the Deeds contained a mutual mistake or that the Acknowledgements on the Deeds contained an error. Phillip Morrow's argument on this point lives or dies depending on which of the 1996 Deeds was executed most recently. By his own admission, he did not know which of the Deeds was executed most recently nor did he know the identity of any person who knew which of the Deeds was executed most recently. This admission was borne out by the complete absence of any supporting proof. Phillip Morrow offered the Trial Court nothing more than what seemed to him a reasonable narrative for the exchange of the 1996 Deeds. An unsubstantiated scenario, no matter how plausible, does not meet the very difficult burdens of proof required to prove a mutual mistake or defective acknowledgment.

The circumstances surrounding these Deeds also do not yield to the After-Acquired Title Doctrine. Phillip Morrow relies on a faulty interpretation of the law concerning the execution of Deeds in arguing that the Deed from his parents was delivered after he reconveyed the property to his parents. Finally, Phillip Morrow is not entitled to an equitable lien as the overwhelming majority of his expenditures in money and labor benefited farm operations for which he received exclusive financial benefit and his brothers did not share in the financial benefits from the farm despite his limited ownership.

Substantial evidence supported the Trial Court's findings of facts. The Trial Court also properly applied the law to those factual findings in denying the relief requested by Phillip Morrow. For these reasons, the Trial Court's decision should be affirmed.

RESPECTFULLY SUBMITTED, this the 10th day of JANUARY, 2011.


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CERTIFICATE OF SERVICE

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