

COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JANET H. WRIGHT

APPELLANT

VS.

NO. 2009-CA-01531

**PATRICIA M. WRIGHT, a/k/a PATRICIA
MICHELLE WRIGHT, JAMES C. O'DANIEL,
a/k/a JAMES CARTER O'DANIEL,
NATIONAL CITY MORTGAGE COMPANY,
AND FIRST TENNESSEE NATIONAL BANK
ASSOCIATION**

APPELLEE

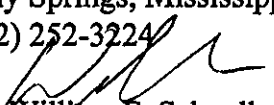

REPLY BRIEF OF APPELLANT

(ORAL ARGUMENT REQUESTED)

Appeal from the Chancery Court of DeSoto County, Mississippi

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By


William F. Schneller, MSB # 

ATTORNEYS FOR APPELLANT

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STATUTES:	
Miss. Code Ann. § 15-1-7	2
Miss. Code Ann. § 15-1-9	2, 6

Reply to Appellee's Statement of Facts

1. First Paragraph, page 4, Appellee uses a response of Janet Wright concerning the payment of rent and contributions to O'Daniel which Wright takes exception, as it implies that she is a freeloader. While the statement is not relevant to the case and neither is the reply, a reply is necessary to Wright's reputation. Appellee states at Tr 82, 17 "we never asked for rent or other compensation from Janet and her husband... Janet is a wonderful grandmother, taking care of Charlie and the kids" and at Tr 94, 10 "it was a good arrangement for what it was".

2. Paragraph 3, page 4, Appellee asserts "It was only after Charles died did Janet, Patricia and Carter first discuss the feasibility of building a house together. No discussion was ever had between the parties regarding the financial aspects of the construction." While Ms. Wright did make confusing statements on cross, Appellee himself states at TR 75, 28-29 and 76, 1-15 that the parties discussed building a house together prior to Charles's death and at TR 77 8-20 acknowledged how much the O'Daniels expected to contribute.

3. O'Daniel continues to cite Mrs. Wright's testimony Page 6, last sentence, first paragraph and last paragraph, for the proposition that no discussion was had as to financial contributions to be made by the O'Daniels, when at TR 77, 8-20 Carter O'Daniel admits discussions did take place concerning contributions up to

\$300,000.00.

Reply to Appellee's Argument

I.

Janet H. Wright incorrectly asserts the applicable statute of limitation is ten (10) years under either MCA §15-1-9 or MCA §15-1-7. Statute of limitations respecting land claims do not apply except where a person invoking the same has been in adverse possession of land against the true owner. The Chancellor correctly applied a three (3) year statute of limitation.

The trial court initially ruled Wright's claim was barred by the general three (3) year statute, basically applying the same reasoning used in the *McWilliams* case¹, cited by O'Daniel. On reconsideration the Chancellor vacated the decision as the Statute of Limitations was not plead as an affirmative defense, then without elaboration, substituted laches in place of statute of limitations. As laches can only be applied after the tolling of the applicable statute of limitations has run, it is understandable that the specific statutes relied upon by Janet Wright had not been previously cited.² Janet Wright stands by her position that MCA § 15-1-9 allows ten years to assert equitable relief to reclaim an interest in land. *McWilliams v.*

¹Judge Lynchard was the presiding judge in the *McWilliams* case.

² O' Daniel did not attempt during trial to assert any injustice or disadvantage as a result of the delay. (Tr 75-98)

McWilliams, 970 So 2d 200, (Miss App 2007) relied upon by O'Daniel is specifically limited to circumstances where fraud is the basis of the claim. The remedies sought by Janet Wright are declaratory judgment, constructive trust/Equitable lien and mutual mistake, not fraud.

II.

With the expiration of the applicable statute of limitations, the equitable doctrine of laches was plead as an affirmative defense and bars any recovery by Janet H. Wright.

Standard of Review: "What constitutes laches or equitable estoppel has been held to depend on the facts and circumstances of each particular case. See *Cannada*, 185 So.2d at 651 (discussing laches) and *Bright v. Michel*, 242 Miss. 738, 749, 137 So.2d 155, 159 (1962) (same, with respect to equitable estoppel). Therefore, a trial court's decision to accept or reject either doctrine will not be disturbed on appeal when the decisions factual findings are supported by substantial evidence. *Cannada*, 185 So.2d at 651." *Delta Housing Development Corporation, Appellant v. Mabel Johnson*, 2008-CA-02127-COA (Miss App 2010)

"The defense of Laches has been viewed with disfavor by the supreme court", *Delta Housing*, citing *Clanton v Hathorn*, 600 So 2d 963, 966 (Miss. 1992)

Carter O'Daniel did not testify to any injustice, prejudice, change in position or detrimental reliance that would constitute substantial evidence to support the Chancellor's findings.

III.

Without a finding of unjust enrichment on the part of Carter O'Daniel, the Chancellor did not error in refusing to impose a constructive trust/equitable lien.

O'Daniel appears to argue that without a written agreement as to ownership there can be no unjust enrichment, relying on 1704 21st Avenue LTD v. City of Gulfport, 998 So2d 412. The Court actually said "we find that 1704 21st Avenues claim for unjust enrichment is a modern denotation for the doctrine of 'quasi-contract'". While there is no written agreement or formal discussion of ownership interest in the home, O'Daniel signed a construction contract, Trial Ex 7 for \$420,000 to \$440,000 and Construction Promissory note promissory note in the amount of \$205,800.00, Trial Ex 4 when he owned zero interest in the home. The parties discussed and signed documents evidencing their percentage of contribution, which in equity equals percentage of ownership. The Appellee and his wife were unjustly enriched by obtaining a two thirds interest in the home costing \$608,000.00 for a contribution of \$215,000.00 when the deed prepared by Bridgeforth Buntin (Trial Ex 3) erroneously did not return Janet Wright back to a fifty percent owner. If the deed had never been modified to include O'Daniel, the same facts could be used to show unjust enrichment on the part of Janet Wright and his wife, Patricia M. Wright.

IV.

The record is void of any written or oral agreements between Janet H. Wright and Carter O'Daniel. In the absence thereof, neither were operating under (sic) by a mutual mistake of material fact which would permit the Chancellor to nullify an agreement.

O'Daniel again attempts to create additional controversy by alleging both Trial Ex 2 and 3 were prepared by mistake. The instrument at issue is the Deed from Carter O'Daniel and Patricia M. Wright to Janet H. Wright, Carter O'Daniel and Patricia M. Wright. (Trial Ex 3). It is undisputed the prior deed from Janet Wright and Patricia M. Wright to Patricia M. Wright and Carter O'Daniel (trial Ex 2) was prepared for the sole purpose of facilitating the permanent financing of O'Daniel's share of the construction cost, with Janet Wright's consent. There was no mistake or confusion as to the purpose or ownership interest on Trial Ex 2. The mistake occurred when an unknown person at Bridgeforth Buntin law office prepared and had signed a deed vesting in the parties a one-third interest each. (Trial Ex 3). It was acknowledged that neither Patricia M. Wright or Carter O'Daniel had any expectation that a change in ownership would occur at or after closing on the permanent financing. In fact both testified they did not look at the documents when signed and did not give direction to any person in the preparation of the deed. Janet Wright did give direction and did not authorize a reduction of

her ownership interest. Therefore, any change in ownership would be a mutual mistake.

CONCLUSION

I. Miss. Code Ann. § 15-1-9 (1972 as amended) provides the time period for seeking recovery of land through equity, this time cannot be shortened by laches.

II. Appellee did not testify he was prejudiced by the delay in Appellee filing suit. As such, the Chancellor's finding is clearly erroneous and should be reversed.

III. Janet H. Wright has proven by clear and convincing evidence the existence of an unjust enrichment in favor of Patricia M. Wright and Carter O'Daniel.

Relief may be granted under either of the two remedies by the Court to balance the equities of the parties, due justice and to correct and to prevent one from getting an unjust enrichment at the cost of another. In the instant case the relief under constructive trust or equitable lien would grant Janet H. Wright a security interest in sixty-seven (67%) of the subject property.

IV. The testimony of all parties establishes the need to reform the deed (Trial Exhibit 2 and 3) as there was a mutual mistake in its preparation and execution. It was never the intent of the parties' to change the form or ownership, it was done merely to facilitate a loan closing. The Chancellor committed reversible error by

failing to allow the reformation of Trial Exhibits 2 and 3.

For all the reasons above this case should be reversed for reconsideration by the Chancellor on whether or not to apply a constructive trust or equitable lien for the unjust enrichment of Appellee and reversed and rendered on the issue of Mutual Mistake.

RESPECTFULLY SUBMITTED,
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BY: 

WILLIAM F. SCHNELLER, MSB 

CERTIFICATE OF SERVICE

I, William F. Schneller, attorney for Appellant, do hereby certify that I have, this day mailed, postage prepaid, a true and correct copy of the above and foregoing REPLY BRIEF OF APPELLANT, to:

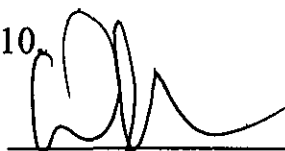
Hon. Gerald W. Chatham
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Hon. Joseph M. Sparkman, Jr.
Post Office Box 266
Southaven, Mississippi 38671, Attorney for Appellee, James C. O'Daniel

and,

Hon. Percy L. Lynchard, Jr.,
Chancellor
P.O. Box 340
Hernando, Mississippi 38632 Presiding Chancellor

This the 21st day of June 2010.



WILLIAM F. SCHNELLER