IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

RICHARD DEAN	PLAINTIFF/APPELLANT
VS.	CAUSE NO. 2009-TS-01793
KATIE C. SLADE, L. GUY JACKSON JEAN DEAN, and FLORA S. NICHOLS RAGAN	DEFENDANTS/APPELLEES

REPLY BRIEF OF THE APPELLANT

(No Oral Arguments Requested)

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for Appellant Richard Dean certifies the following list of persons have an interest in the outcome of this case. These representations are made in order that the Judges of the Mississippi Supreme Court may evaluate possible disqualifications or recusal:

1. Appellant, Richard Dean;

2. Appellee, Katie C. Slade;

3. Appellee, L. Guy Jackson;

4. Appellee, Jean Dean;

5. Appellee, Flora S. Nichols Ragan;

6. Pepper A. Pearson, Page, Mannino, Peresich, & McDermott, PLLC, 2408 14th Street, Gulfport, MS 39501-2019; Attorney for Appellant Richard Dean;

7. John M. Kinard and Kevin M. Melchi, Wilkinson, Williams, Kinard, Smith & Edwards, 734 Delmas Avenue, Pascagoula, MS 39567; Attorney for Appellee Katie C. Slade;

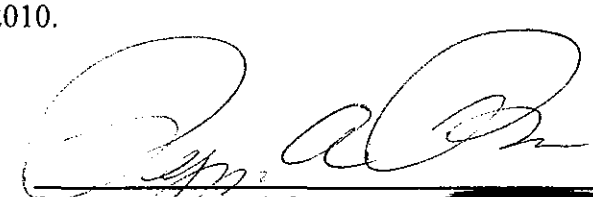
8. John M. Kinard and Kevin M. Melchi, Wilkinson, Williams, Kinard, Smith & Edwards, 734 Delmas Avenue, Pascagoula, MS 39567; Attorney for Appellee L. Guy Jackson;

9. John M. Kinard and Kevin M. Melchi, Wilkinson, Williams, Kinard, Smith &

Edwards, 734 Delmas Avenue, Pascagoula, MS 39567; Attorney for Appellee Flora S. Nichols Ragan;

10. Chancery Court Judge Jaye A. Bradley, P.O. Box 998, Pascagoula, MS 39568-0998; trial court judge.

THIS, the 3rd day of June, 2010.



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STATEMENT OF THE CASE

Although a Statement of the Case is not specifically required under Rule 28 of the Mississippi Rules of Appellate Procedure in an Appellant's Reply Brief, the Appellant herein is compelled to respond to a procedural misstatement made by the Appellees Katie C. Slade and L. Guy Jackson in their Response Brief. As a part of their Statement of the Case, the Appellees assert that the Richard Dean failed to supply a statement of facts, and, therefore, the facts contained in the Appellees Response should be adopted as undisputed. (Response at p. 3). However, M.R.A.P. 28(a) requires that the statement of case is required to contain the nature of the case, the course of the proceedings below, and the facts with cites to the appropriate part of the record. Miss. Rule App. P. 28(a)(4). Although Appellant did not give specific headings to each of these items required in the statement of the case, all relevant portions were included. Further, the Mississippi Supreme Court has ruled that an appellant's statement of the facts will not be stricken so long as there are no misrepresentations. *Davis v. J.C. Penney Co.*, 626 So. 2d 140 (Miss. 1993). Similarly, the Court of Appeals has suspended the need for a statement of the issues when the issues were separately presented and briefed in the body of the brief. *Starks v. State,* 798 So. 2d 562 (Miss. App. 2001). Not only does the Appellant Richard Dean discuss the basic facts of the case in his statement of issues, he also cites multiple times throughout his Brief to the Record and Transcript from the lower court. Therefore, this issue is merely a diversion by the Appellee, and is without merit.

SUMMARY OF THE REPLY ARGUMENT

The law of this State is well established that for possession to be adverse it must be (1) under claim of ownership; (2) actual or hostile; (3) open, notorious, and visible; (4) continuous and uninterrupted for a period of ten years; (5) exclusive; and (6) peaceful." *Apperson v. White,* 950 So. 2d 1113, 1116 (Miss. App. 2007); citing *Walker v. Murphree,* 722 So.2d 1277, 1281 (P16) (Miss. Ct. App. 1998). Further, the ruling of a Chancellor in an adverse possession case must be overruled if it shown that the decision was not supported by substantial evidence, was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied. *Id.*, citing *Sanderson v. Sanderson,* 824 So. 2d 623, 625-26 (Miss. 2002). The Chancellor in this matter not only ignored and misstated in her Findings of Fact and Conclusions of Law the testimony and evidence at trial, but also applied erroneous legal standards to the evidence and testimony presented. The arguments presented by the Defendants/Appellants Slade and Jackson in their Response fail to justify or support the Chancellor's ruling.

The Defendants/Appellees in this matter argue in their Response that the decision of the Chancellor was not erroneous, and support this argument with misstatement of facts, law, and theories of the case that are not contained in or supported by the Chancellor's ruling. The Defendants/Appellees Jackson and Slade primarily rely upon the proposition that Richard Dean is a co-tenant to support their arguments throughout their Response. Richard Dean is not a co-tenant under the facts and law of the case, nor has he ever claimed to be.

Further, the Brief of the Appellees fails to refute one major part of the facts of this case– that Richard Dean always held the property out as his solely, that the Appellees heard him say this, and the Appellees took no acts within the ten (10) year time limit to remedy. The Appellees Jackson and Slade also assert throughout their Response that Richard Dean's failure to build a house or farm the

land defeats his adverse possession. However, his actions of paying taxes, maintaining and repairing fences, posting signs, and holding the property out to everyone as his own was more than sufficient to assert adverse possession of property rightly designated as "wild lands".

REPLY ARGUMENT

The law of this State is well established that for possession to be adverse it must be (1) under claim of ownership; (2) actual or hostile; (3) open, notorious, and visible; (4) continuous and uninterrupted for a period of ten years; (5) exclusive; and (6) peaceful." *Apperson v. White,* 950 So. 2d 1113, 1116 (Miss. App. 2007); citing *Walker v. Murphree,* 722 So.2d 1277, 1281 (P16) (Miss. Ct. App. 1998). The appellate court must look to the evidence and determine "whether or not the statement of facts justify the decree." *Buford v. Logue,* 832 So. 2d 594, 600 (Miss. App. 2002). Further, the ruling of a Chancellor in an adverse possession case must be overruled if it shown that the decision was not supported by substantial evidence, was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied. *Id.*, citing *Sanderson v. Sanderson,* 824 So. 2d 623, 625-26 (Miss. 2002).

I. The Appellees Katie C. Slade and L. Guy Jackson Are Prohibited from Asserting Co-Tenancy

Throughout the Response of Appellees Slade and Jackson, the Appellees assert that Richard Dean is a co-tenant. (Response at pp. 4, 6, 9, 10, 11, 14, 16, 17, 20, 21, 22, 23, 24). The co-tenant designation is used by the Appellees to impose a higher standard for adverse possession that was not a part of the lower court's ruling. (*Id.*). The Mississippi Supreme Court has ruled that an appellee must file a cross-appeal if it is aggrieved by the lower court's judgment or to obtain a more favorable judgment than that rendered. *Dunn v. Dunn,* 853 So. 2d 1150, 1152 (Miss. 2003); *Miss. Real Estate Appraiser Board v. Schroeder,* 980 So. 2d 275, 288 (Miss. App. 2007); *Presley v. City of Senatobia,* 997 So. 2d 235, 238 (Miss. App. 2008). The Appellant admits that cross-appeal is not necessary when a party is merely putting forth alternative grounds for affirmance of judgment. *Id.* However,

the assertions of the Appellees Slade and Jackson regarding co-tenancy are more than mere assertions of alternative grounds.

The Findings of Fact and Conclusions of Law incorporated by reference into the Final Order of the lower court stated that "Rick has no record title to this property", and no part of her ruling declares him a co-tenant. (Record at p. 29). Further, the Order Determining Heirship from a separate case in the Jackson County Chancery Court dated May 2, 2006, was made a part of the record in this matter, and it named Katie C. Slade, Jan Dean, L. Guy Jackson, and Flora S. Nichols Ragan as the rightful heirs at law. (Trial Exhibits 4, 5, 6). The assertions of Slade and Jackson that Richard Dean is a co-tenant is in direct contradiction of the Findings of Fact, as well as the Heirship Judgment made a part of trial. If Slade and Jackson wished to assert their claim that Dean should be held to a co-tenancy standard they should have appealed the Heirship determination, not submitted the Heirship Order at trial, or cross-appealed as to that issue. Presentation of the co-tenancy argument at the appellate level would allow the Appellees to put themselves in a better position by requiring that the interest of Richard Dean be reviewed at the higher co-tenancy standard for adverse possession.

II. Richard Dean Possessed the Property Under a Claim of Ownership

A. Plaintiff's Interest Was as to the Property as Whole, Not a Co-Tenant

As stated above, Findings of Fact of the Chancellor in the lower court stated that "Rick has no record title to this property", and no part of her ruling declares him a co-tenant. (Record at p. 29). Although the Appellant agrees that he is not a co-tenant, and reasserts his arguments *supra* regarding co-tenancy, he objects to the Chancellor's denial of his claim of adverse possession, as well as many of the suppositions she bases this decision upon.

Under Mississippi law, the purpose of the parol gift when gaining title by adverse possession is to evidence the character of the entry and extent of the claim. *Davis v. Davis,* 68 Miss. 478, 481, 10 So. 70, 71 (Miss.1891). Further, a parol gift of land, unto itself, may not pass title. *Id.* Richard Dean believed he received title to the subject property by the parol gift of his grandmother, Fannie Louis Voitier. (Transcript at 12). Further, Dean believed he gained title solely in himself, and not as a co-tenant. (*Id.*). Evidence of the parol gift of Fannie Louis Voitier to Richard Dean was presented to establish the character of the entry, meaning how Dean believed he received title, and the extent of the claim, meaning what property he owned. The evidence of parol gift alone would not make Richard Dean a co-tenant, but does establish the basis for his belief as to his sole ownership and his adverse possession claim against the Defendants.

However, even if Richard Dean is found to be a co-tenant, the evidence still shows that he adversely possessed the subject property to gain title from the Defendants. Specifically, testimony by Katie C. Slade provided that Richard Dean received title to the subject property by the parol gift of his grandmother, Fannie Louis Voitier. (Transcript at 12, 92). Additionally, L. Guy Jackson admits that Richard Dean repeatedly informed him of his belief that Jackson had no interest and Dean was the sole owner. (Transcript at p. 67). While Slade at first denied Richard Dean ever told her he claimed it all or denied her interest (Transcript at 103), she later admits that he did, in fact, do so exactly that in no uncertain terms. (Transcript at 107). Curiously, in Slade's aforementioned denial that Dean informed her of his claim of sole ownership, she nonetheless feels compelled to assert that she always "emphasized" to Dean her ownership. (Transcript at 103). It begs the question that if, as she testified at this point, that her interest was not only unchallenged, but "understood," she felt a need to allegedly repeatedly "emphasize" it. Under the law of adverse possession between co-tenants, in addition to meeting the six (6) requirements cited above, there must be proof of ouster.

Ouster is defined as "the wrongful dispossession or exclusion by one tenant in common of his co-tenants from the common property of which they are entitled to possession." *Cheeks v. Herrington,* 523 So. 2d 1033 (Miss. 1988). As a part of ouster, the co-tenants must have "actual knowledge" of the adverse claim. *Nichols v. Gaddis and McLaurin, Inc.*, 222 Miss. 207, 75 So. 2d 625 (Miss. 1955). Further, "Adverse use is defined as such a use of the property as the owner himself would exercise, disregarding the claims of others entirely, asking permission from no one, and using the property under a claim of right." *Cummins v. Dumas,* 147 Miss. 215, 113 So. 332, 334 (1927); *Apperson v. White,* 950 So. 2d 1113, 1116 (Miss. App. 2007). The actual notice by verbal communication to both Slade and Jackson constitutes ouster.

B. Plaintiff's Payment of Taxes As Part of Cumulative Acts Asserted Ownership

The Response of the Appellees assert that payment of taxes by Richard Dean was not sufficient to assert ownership due to the fact that his grandmother did not pass until 2000, and he may not insert himself into the position of that person in whose name the taxes are being paid by sending a check. (Response at p. 11). The Response of the Appellees also asserts that his actions of paying taxes was that of a co-tenant, and his letting the taxes lapse in 2002 and 2003 was a way of circumventing the rules of probate. (*Id.*) However, the Appellees have distorted the facts and ignored the evidence of the lower court.

The Appellees assert that Richard Dean is a co-tenant, an assertion adamantly denied by him, and an argument that is barred at this appellate level, as has been discussed *supra.* However, the Appellees contradict their co-tenancy argument by the very assertions put forth in their Response. After stating that Richard Dean is a co-tenant, the Appellees then assert that, until the death of Richard Dean's grandmother, he was merely paying the taxes on her behalf. (Response at p. 11). The Appellees may not have it both ways. If Richard Dean received his interest by parol gift from

his grandmother and is in fact a co-tenant, then his receipt and payment of taxes on his own behalf began in 1993. (Transcript at p. 12).

Further, the Appellees assert that Richard Dean let the taxes lapse in 2002 and 2003 in an attempt to subvert the role of the Chancery Court in probate matters. (Response at p. 11). However, Richard Dean was attempting to avoid probate in Florida, not Mississippi, and avoid the prohibitive cost of same. (Transcript at p. 53-54). It should be noted that their have been no assertions by Slade or Jackson that the Defendants in the lower court action, meaning Ragan, Jackson, or Slade, had an interest in the estate of Fannie Louis Voitier. Further, the estate proceedings of Fannie Louis Voitier is irrelevant to this matter except for providing Richard Dean's rationale for attempt to purchase *his own property* at tax sale.

C. Plaintiff Believed He Was the Sole Titleholder to the Subject Property

The Response of the Appellees Slade and Jackson asserts that Richard Dean did not believe that he was the sole titleholder of the property due to the fact that he had admitted not having title, and he repeatedly discussed purchasing the interests of the Defendants in the subject property. (Response at pp. 12-13). The Response of the Appellees regarding admissions by Dean is patently false, and ignores the fact that the testimony of Jackson and Slade was inconsistent and contradictory.

Richard Dean's testimony that he would be willing to pay certain sums was in reference to him merely paying a nuisance value settlement to avoid litigation, and not an admission of the Defendants'/Appellees' alleged co-tenancy. Therefore, the Chancellor's reliance in this matter on the discussions of purchase of the property should be deemed improper.

In addition, Katie C. Slade testified at trial that Richard Dean had informed her of his belief in his sole ownership in the subject property. Katie C. Slade testified as follows:

A. ...[H]e told me that he did not have to fool with me or Guy, that he could do with whatever he wanted with the property. And I told him absolutely not. That, you know– he said, I could build a house in the middle of it. I said, no, you cannot build a house in the middle of that property. I said, you know, this is an undivided legal estate. I mean, we need to go through legal channels to do this. You can't just go build a house, *because you say it's yours.*

Q. So, at that point he told you he thought it was his property?

A. And I told him absolutely no, that I have a third interest, Guy has a third interest. And it turned into an argument. ...

(Transcript at 107); (*emphasis added*). This testimony is in direct contradiction of Katie C. Slade's earlier testimony at trial that she never heard Richard Dean say to her that he owned the entire parcel solely. (Transcript at 103). What is consistent throughout is that all parties admitted that Richard Dean held the property out as his solely.

Further, the Appellees Jackson and Slade assert that their informing Richard Dean that they believed he did not own it all was sufficient to overcome his adverse possession of the property. As stated in the Appellant's Brief, and reiterated here, " There must be either a suit during the time before the expiration of the ten-year period or there must be a physical interruption of the adverse possession, or some unequivocal asserting of the claimant's rights...". *McSwain,* 247 So. 2d at 709. The mere verbal communication of the Appellees Jackson and Slade was insufficient

D. Dean's Replacement, Repair, and Maintenance of the Fence is Conclusive of Ownership

The Response of the Appellees Slade and Jackson cites to *Double J. Farmlands v. Paradise Baptist Church,* 999 So. 2d 826 (Miss. 2008), for the assertion that a fence alone will not establish ownership by adverse possession. (Response at p. 13). The portion cited by the Appellees is a quote from *Snowden & McSweeny Co. v. Hanley,* 195 Miss. 682, 16 so. 2d 24 (Miss. 1943), which admits that a fence or hedge-row is sufficient, so long as it is sufficient to put the owner on notice of the adverse claim. Further, as stated in Richard Dean's Appellant Brief, it must be distinguished that

the claim for adverse possession in the *Snowden* and in the *Double J. Farmlands* matters were in the nature of a boundary dispute. *Double J. Farmlands,* 999 So. 2d 826 (Miss. 2008); *Snowden & McSweeny Co.,* 195 Miss. 682, 16 so. 2d 24 (Miss. 1943).

The case at hand is not as to a boundary dispute, but involves an entire parcel. As was iterated in the Appellant's Brief, the Mississippi Supreme Court has stated that "If a fence encloses the property for ten years, under a claim of adverse possession, title vests in the claimant and possessor, even though the fence was subsequently removed or fell into disrepair." *Cole v. Burleson,* 375 So. 2d 1046 (Miss. 1979); see also *Burnsed v. Merritt*, 829 So. 2d 716 (Miss. App. 2002). In this matter, Richard Dean erected portions of the fence when missing, repaired the existing fence, and maintained the fence that was the traditional and accepted boundary of the property. Additionally, he posted signs notifying the public at large of his ownership. Further, there was testimony from five witnesses, including two members of law enforcement, who saw these "Posted" signs bearing Dean's name and number, and these signs, along with myriad other acts by Richard Dean, caused them to believe and accept Dean as the owner of the parcel (Transcript at 60-64). In fact, one of these witnesses testified that he first contacted Dean via these signs and after having known Dean for some five years, became among the permissive users and signed a release in Dean's favor alone. The acts of fencing and posting is further evidenced by the receipts entered into evidence showing the materials purchased by Richard Dean to maintain the fence. (Exhibit 10). The Appellees Jackson and Slade cite again to *Snowden & McSweeney,* for the assertion that the fence only enclosing three sides of the property makes it unclear as to what property is being adversely possessed. (Response at p. 14). However, as stated above, the claim for adverse possession in the *Snowden* matter was in the nature of a boundary dispute. 195 Miss. 682, 16 so. 2d 24 (Miss. 1943). Further, *Burnsed* and *Burleson* both support the contention that the fence not be complete or intact

to "fly the flag over the land" putting people on notice of the adverse possession. Also, while not material to supporting Richard Dean's argument, the assertion that only three sides of the fence is inaccurate. A fourth side, constructed by the adjacent landowner, and "tied in" to the subject property's fence does exist. Notably, Slade admits that she saw fencing, but never determined its extent and Jackson admits that his last visit to the property was in 1992. (Transcript at pp. 65, 89). Jackson further testified that Richard Dean informed him that he (Dean) intended to fence the property but Jackson did not know whether the fence enclosed the property. (Transcript at 66). Obviously, since Jackson made no attempt to visit the property, and in fact, testified:

> Q. Is it pretty much your position that you felt like you had an ownership interest and you weren't going to be bothered with coming down here and looking after it or anything like that?
>
> A. Yes.
>
> Q. So, if Rick was taking any active position on the property, then you wouldn't have been aware of it?
>
> A. True.
>
> Q. Did Rick ever tell you that he felt like you had no ownership interest and that he owned it.
>
> A. He implied it all of the time.

(Transcript at pp. 66-67). It was further stated:

> A. And I was showing him those maps. I was showing him where I thought I owned, on the partial interest, a third of it. And that –
>
> Q. uh-huh(indicating yes.)
>
> A. And that my cousin owned a third. And he kept saying he owned it all. And I didn't pay any attention to him.

(Transcript at pp. 68). The Mississippi Legislature enacted the adverse possession statute to resolve the problem of inattentive landowners such as L. Guy Jackson. See *Buford v. Logue,* 832 So. 2d 594, 601 (Miss. App. 2002). This ruling in *Buford,* is direct support for not giving the testimony or conclusions that Slade and Jackson did not see the signs or fencing credence.

III. Richard Dean's Occupation and Use of the Subject Property Was Hostile

The ultimate question to be considered when determining hostile possession is whether the possessory acts relied upon are sufficient to place the record title holder on notice of the adverse possession claim. *Webb v. Drewrey,* 4 So. 3d 1078, 1082 (Miss. App. 2009). Further, Mississippi case law has established that possession that is adverse "and actually, known to the true owner is equivalent to a possession which is open and notorious and adverse." *Sturdivant v. Todd,* 956 So. 2d 977, 993 (Miss. App. 2007); citing *McCaughn v. Young*, 85 Miss. 277, 294, 37 So. 839, 842 (Miss. 1901).

The Appellees Jackson and Slade assert that Dean's use and occupation of the land was not actual or hostile because the possession was not easily perceptible to the eye. (Response at p. 15). They further rely on the fact that Dean did not clear the land or build structures. (Response at p. 16). However, as cited above, if the acts of possession are sufficient to put the record title holder on notice, then the possession is hostile. *Webb,* 4 So. 3d at 1082. Further, Mississippi case law recognizes that a party may maintain such control over a parcel of land as to amount to actual possession. *Buford,* 832 So. 2d at 603. This does not necessarily mean that a party must build a home and live on the property to assert hostile possession. It is clear from the testimony in the lower court that Dean informed the Appellees Jackson and Slade that he owned the property in its entirety.

(Transcript at pp 65-68, 106-107) Dean's verbal assertion of sole ownership was hostile possession that put the Appellees on notice.

The Appellees also assert that Dean's use and occupation was not actual or hostile because he did not pay the taxes in 2002 and 2003, which acted as an interruption in the ten (10) years. (Response at pp. 16-17). However, this ignores the other acts taken by Dean, including maintenance of fences, posting of signs, and giving of permission to outside parties to use the land. (Trial Exhibit 10); (Transcript at pp. 15-23).

In further support of the Appellees argument regarding hostile possession and payment of taxes, Slade and Jackson discuss the alleged agreement to share payment of taxes on a rotational basis. (Response at pp. 16-17). As was discussed in the Appellant's Brief, Richard Dean denies that any such agreement existed between them. (Record at pp. 34). The only testimony regarding this alleged agreement was from Katie C. Slade regarding some vague "rotational" agreement in which Dean, Slade and Jackson would "rotate" paying the taxes. (Transcript at p. 97). However, Katie C. Slade never attempted to transfer the tax notices back to her, pay the taxes from her own money, or offer any money to Richard Dean for taxes from 1995 through 2005. Further, Katie C. Slade admits that she did not attempt to pay any the taxes, until redemption of the 2002 taxes in 2005, while failing to redeem 2003 and 2004 taxes still due. (Transcript at p. 106). Further, L. Guy Jackson's testimony reveals that he made vague claims to paying taxes in the 1980s, but definitively had not paid any taxes on the property since 1993. (Transcript at p. 67-68). Further Jackson had no first hand knowledge of who or how they were paid. (*Id.*). It strains the bounds of logic that if there was a rotational agreement that one party would wait a decade before assuming her duties to pay, and that another party would have no knowledge as to the agreement or as to whether the taxes were even paid.

IV. Richard Dean's Possession Was Open, Notorious, and Visible

A. Richard Dean's Reliance on "Wild Lands" is the Proper Standard

The Appellees Jackson and Slade rely on the assertion that the property was not "wild lands" to defeat the argument that Richard Dean did not possess the property openly, notoriously, and visibly. (Response a p. 18). Jackson and Slade rely on the fact that Richard Dean intended to build a house on the property as proof of its status as something other than "wild lands". (*Id.*). In the Appellees Response, they specifically state, "Plaintiff testified unequivocally that he intended to build a house and reside on this land, ***so its status cannot be that of "wild land.***" (Transcript at p. 32). However, this is in stark contrast to their previous assertions in the lower court proceedings and the decision of the Chancellor. As stated in the Appellees Pre-Trial Brief:

> Defendants understand that "[a]dverse possession of "wild" or unimproved lands may be established by evidence of acts that would be wholly insufficient in the case of improved or developed lands." *Id. In this case, the subject property is "wild" or unimproved,* but it is unapparent what acts Plaintiff is relying on to prove adverse possession

(Record at p. 66). The assertion that the subject property is not "wild lands" is patently wrong and against the assertions of all parties involved. As noted in the Appellant's Brief, the Findings of Fact and Conclusions of Law of the Chancellor stated that

> The subject property in this case is unimproved and undeveloped land. Upon the Court's viewing of the property it was noted that the underbrush and forest on is very think *(sic)* except for a two lane path which traverses across the front of the property.

(Record at p. 34). Further, when discussing "wild lands", the Mississippi Supreme Court has stated that actual occupation, cultivation, nor residence is necessary when the property is so situated as not to admit of any permanent, useful improvement. *McCaughn v. Young,* 85 Miss. 277, 37 So. 839 (Miss. 1909). This ruling of the Court shows that it is not what the party adversely possessing may

intend to do with the property in the future, but the state of the subject property during the period of time it was adversely possessed.

B. The Chancellor Ignored Unbiased Evidence

The Appellees also attempt to rely on the argument that the Chancellor's viewing of the property should be considered in giving her deference in her decision. (Response at p. 18). Jackson and Slade rely upon the ruling in *Broadus v. Hickman,* 210 Miss. 885, 50 So. 2d 717 (Miss. 1951) that "any person of ordinary observation, going upon and inspecting the land as a prospective purchaser would have noticed signs of ownership being exercised thereover." (Response at p. 18). The Chancellor recognized, and included at trial, the uncontroverted sworn testimony of multiple witnesses not a party to the litigation that saw signs posted on the property by Dean. (Record at p. 32). The stipulated testimony shows that persons of ordinary observation saw Richard Dean's signs of ownership. The stipulated testimony shows that persons of ordinary observation saw Richard Dean's evidences and acts of ownership, dominion, custody and control. This evidence and the acts by Richard Dean, such as allowing permissive use, placing "Posted" signs bearing his name and phone number, erecting and maintaining fencing, asking and giving permission to law enforcement to monitor the land, etc., as well as his general interaction with the neighbors and public, were of sufficient quantity and quality to cause these persons to believe that Dean was the owner of the property. Further, his dealings with both hostile and "friendly" overtures toward the property was as a sole owner, without permission, consultation or assistance from Slade or Jackson (Transcript at pp. 12-25, 66, 104-105). He received and rejected, on his own, overtures to purchase the property, he protected against trespassers on his own, with his own funds, without seeking permission or assistance from the Defendants (*See* Trial Exhibit 7, 8, 10; Transcript at pp. 12-25).

It is clear from Dean's testimony and the Trial Exhibits cited to above that Richard Dean was heavily and continually involved in the land as its owner. He incurred and paid from his own monies considerable expenses, separate and apart from the ad valorem taxes, traveled to the land from Texas several times a year, protected the land from encroachments and trespassers, etc., and never asked the Appellees for any assistance with any of this, either in the form of time or money, or consulting with them in any way. This is in direct contrast with the Appellees Slade and Jackson's self-described acts, including the fact that Jackson never so much as visited the property, despite living within an hour and Slade only "drove by once a year," despite living about 15 minutes from the property. (Transcript at pp. 65, 87). The Defendants allege that Dean's above actions and expenditures, as well as others discussed elsewhere, and for some 12-plus years, were solely as some form of "repayment" *to them* because Slade's father, Garland Cox, had simply mailed a check, using his own and Fannie Louise Voitier's money, once a year for some period of years. And moreover, they allege, he did all of this for their benefit, for those 12-plus years, after he had told them point-blank that he did not believe they had any interest in the property. The Appellant Richard Dean would urge that such a position on the part of the Slade and Jackson strains credibility and common sense.

V. Richard Dean's Possession Was Continuous and Uninterrupted for Ten (10) Years

The Appellees Jackson and Slade state in their Response that merely informing someone you own an interest is not sufficient notice to start the clock running. (Response at pp. 20). However, as stated above, the law of adverse possession in Mississippi prefers actual notice by verbal or written communication stating that

> while actual notice that the grantor is claiming title in himself is of course sufficient to set the statute of limitations in motion, express, written, or verbal notice to the grantee that the grantor is claiming title in himself is not necessary.

Cummins v. Dumas, 147 Miss. 215, 223, 113 So. 332, 334 (Miss. 1927); see also *Trotter v. Gaddis and McLaurin, Inc.,* 452 So. 2d 453 (Miss. 1984). Clearly, the verbal notice of Richard Dean to Jackson and Slade was more than merely sufficient to start the clock running, but, in fact, is *actual notice*. This verbal notice of Richard Dean to the Appellees is admitted to at trial by both L. Guy Jackson and Katie C. Slade. (Transcript at pp. 67-68, 106-107).

VI. Richard Dean's Possession Was Exclusive

The Appellees Jackson and Slade assert that the Appellant Richard Dean took no acts sufficient to exercise dominion as to the exclusion of his alleged co-tenants. (Response at pp. 21-22). They base this upon the alleged discussions to sell the property, and his failure to clear underbrush, build a house, or provide more than mere words. (*Id.*). As stated above, Richard Dean denies all claims to co-tenancy, and adamantly asserts that the Appellees are procedurally barred from making said argument. However, in an effort to address these co-tenancy claims, the Appellant must point out that the Appellees ignored the abundance of evidence regarding Dean's communications with the public at large that it was his property solely, his repair and maintenance of the fence, posting of signs, and payment of taxes. These cumulative acts were clear and convincing evidence of exclusive possession. This is in contrast to the fact that Slade did no more than occasionally visit the property, and Jackson never visited the property a single time after his sole visit in 1992.

Further, the Appellees assertion ignores the "wild lands" standard that must be applied in this matter. In this matter, uncontradicted evidence was presented that the subject property was "wild lands" as defined by the courts of this state. For example, Richard Dean had continuously maintained the property's tax status as commercial agricultural. (Trial Exhibit 9). This tax

designation is for property that has not been developed or improved. Further, the Defendants/Appellees admitted in their Trial Brief that the subject property was "wild lands", and should be treated with the appropriate lower standard for adverse possession. (Record at 66).

Mississippi case law is well settled that

> [N]either actual occupation, cultivation, or residence are necessary to constitute actual possession when the property is so situated as not to admit of any permanent useful improvement, and the continued claim of the party has been evidenced by public acts of ownership, such as he would exercise over property which he claimed in his own right, and would not exercise over property he did not claim.

Broadus, 50 So. at 720; see also *McCaughn v. Young,* 85 Miss. 277, 37 So. 839 (Miss. 1909). It was not necessary for Richard Dean to erect a house or farm the property due to its status as "wild lands". His holding the property out as his own against the public at large and the Appellees was more than sufficient.

VII. Richard Dean's Possession of the Subject Property Was Peaceful

In their Response, Jackson and Slade rely on Slade's redemption of taxes as an interruption of the peaceful possession of the subject property. (Response at pp. 22-23). However, as noted in the Appellant's Brief, Katie C. Slade admits that she did not attempt to pay any of the taxes, until redemption of the 2002 taxes in 2005, while failing to redeem 2003 and 2004 taxes still due. (Transcript at p. 106). Further, the Appellees cite *Moran v. Sims* and *Buford* for the premise that if there is a dispute or controversy, the possession is not "peaceful." However, this is a misstatement of these cases and the law. A "dispute" or "controversy" does not negate "peaceful" possession, and "the mere existence of a dispute regarding ownership of the land does not present an obstacle to satisfy the peaceful element of adverse possession. *Apperson*, 950 So. 2d 1113, 1116 (Miss. App. 2007). Under the misstatement of law as urged by

the Defendants, a party subject to a claim of adverse possession would need to do nothing more than allege to have merely "disputed" the claim, that would be a sufficient "breach of the peace" and prohibit "peaceful possession" as it relates to adverse possession. However, as the law of the case shows, the Appellees were required to do more than merely state they had an interest and Richard Dean did not.

CONCLUSION

The Appellees Katie C. Slade and L. Guy Jackson assert co-tenancy throughout their Response Brief. Their assertion of co-tenancy is barred due to their failure to file a cross-appeal. Further, their co-tenancy argument is not supported by the facts and evidence submitted at the lower court.

The Appellees attempt to use the testimony regarding the parol gift of Fannie Louis Voitier to Richard Dean as evidence of the co-tenancy. The evidence of parol gift alone would not make Richard Dean a co-tenant, but does establish the basis for his belief as to his sole ownership and his adverse possession claim against the Defendants.

However, even if Richard Dean is found to be a co-tenant, the evidence still shows that he adversely possessed the subject property to gain title from the Defendants, including the undisputed testimony of all witnesses that Richard Dean informed the Defendants and the public at large that he was the sole owner. Further, the Appellees argue that Richard Dean's actions of ownership were not perceptible to the eye. However, as case law and the evidence shows, Richard Dean's acts of ownership were more than sufficient to provide actual notice and hostile possession for the requisite ten (10) years. The assertion of the Appellees that possession was not for the requisite time period ignores the trial record and testimony. Slade and Jackson's assertion that possession was not exclusive ignores the proper standard placed upon "wild lands". Further, the Appellees assertion of interruption of peaceful use by Slade's redemption of taxes is mistaken, as her redemption was outside of the ten (10) year requirement.

CERTIFICATE OF SERVICE

I, PEPPER A PEARSON, of the law firm of PAGE, MANNINO, PERESICH & MCDERMOTT, P.L.L.C., do hereby certify that I have this date mailed, by United States Parcel Service Overnight Delivery, postage prepaid, a true and correct copy of the above and foregoing Reply Brief of the Plaintiff/Appellant to the Supreme Court Clerk at her usual mailing address of Mississippi Supreme Court, 450 High Street, Jackson, Mississippi 39201-3418, and also via United States Parcel Service Overnight Delivery to John M. Kinard, Esquire, at his usual business address of Wilkinson, Williams, Kinard, Smith & Edwards, 734 Delmas Avenue, Pascagoula, MS 39567, and also to the Honorable Jaye Bradley, Jackson County Chancery Court Judge, Post Office Box 998, Pascagoula, Mississippi, 39567.

THIS, the 3nd day of June, 2010.

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