

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

REBECCA CONLIFF

APPELLANT

v.

CASE NO: 2009-CA-01803

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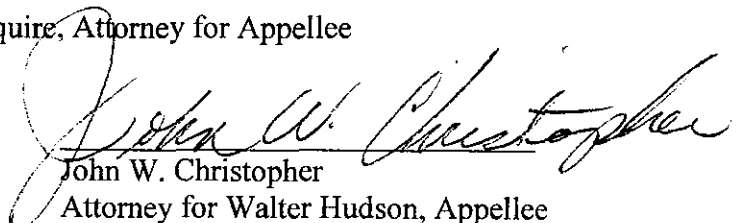
WALTER HUDSON

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following 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 on the Court of Appeals may evaluate possible disqualification or recusal:

1. Rebecca Concliff, Appellant
2. Walter Hudson, Appellee
3. Honorable Janace Harvey-Goree, Madison County Chancellor
4. K. F. Boackle, Esquire, Attorney for Appellant
5. Jeffrey L. Lee, Esquire, Attorney for Appellant
5. John W. Christopher, Esquire, Attorney for Appellee

  
John W. Christopher  
Attorney for Walter Hudson, Appellee

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### STATEMENT OF THE CASE

Walter Hudson (Hudson) laid claim to a tract of land measuring approximately 29 feet in width. Hudson continuously used the strip of land from the time he received his warranty deed on October 14, 1977 without any interference from Rebecca Conliff, (Conliff) an adjoining landowner on the west of Hudson's property, until she had her property surveyed on or about August 29, 1996 after which she informed Hudson that the 29 foot strip of land belonged to her. Beginning in September 1996 Conliff began to claim the property as her own. In the litigation that followed Hudson claimed title to the disputed strip of land by adverse possession which was affirmed by the judgment of the Chancery Court of Madison County, Mississippi. Feeling put out by the Chancellor's ruling Conliff has appealed.

### STATEMENT OF FACTS

On September 11, 1974 Conliff purchased a 40 acre tract of land from Thurman Howard which was described as:

W1/2 E1/2 NE1/4, Section 18, Township 11, Range 4 East, Madison County.

This purchase was evidenced by warranty deed which was recorded in the land records of Madison County, Mississippi and which was received in evidence as Exhibit 2 (T. 14). By warranty deed dated October 11, 1977 Hudson purchased a 40 acre tract described as:

E1/2 E1/2 NE1/4, Section 18, Township 11, Range 4 East, Madison County.

Hudson's deed was received in evidence as Exhibit 3 (T.14).

Conliff's 40 acre tract and Hudson's 40 acre tract joined with Conliff's tract being on the west side of Hudson's. At the time of the purchase there was an old barbed wire fence on the west side of Hudson's property which he understood was his west boundary line separating his

land from Conliff's. (T. 15-16). Thurman Howard, the predecessor in title to both Hudson and Conliff testified that the fence referred to by Hudson did not represent the boundary line and he had not conducted a survey to establish the exact location of the line. According to Thurman Howard, his best guess was that Hudson's western boundary was along the west line of the driveway which provided entrance to Hudson's property from Truitt Road which placed the boundary about 29 feet east of the fence. (T. 69-71)

In 1978 Hudson built a house approximate 35 feet from the fence. Hudson testified that the old fence started at Truitt Road and only went down to Conliff's shop and that Conliff had extended the fence south past Hudson's building site. (T. 17).

Hudson cut the trees and cleared the brush on the 35 foot strip between his house and the old fence and its extension. In making use of the property Hudson had a water line installed with a faucet on the disputed land, planted a garden, shrubs, and flowers. Hudson also parked his vehicles and equipment on the disputed tract. (T. 35-37) Hudson's possession of this tract was uninterrupted from 1978 when he built his house until September 1996. (T. 18-21, 24).

In September, 1996 Conliff presented Hudson with a purported lease under the terms of which he would lease from her a strip of land measuring approximate 29 feet wide and 200 feet in length, which is part of the disputed land. Hudson admitting signing the document but he also explained that Conliff and her husband began to harass him by throwing trash on the disputed property which included bottles and cans, some of which struck Hudson's vehicles. Hudson testified that he signed the agreement because he did not want to have any conflict with Conliff and he did not want to have any more problems. (T. 21-23; Exhibit 4)

Beginning in September 1996 Conliff began a campaign of harassment against Hudson which included filing trespass charges against Hudson in the Madison County Justice Court

charging Hudson with trespassing on the disputed tract, based upon the first Jack Starr survey. Hudson was found guilty and fined. (24-25)

Conliff also hired a bulldozer operator to completely destroy and remove the old fence which had been in place at the time Conliff and Hudson had purchased their property from Thurman Howard. In addition to destroying the fence Conliff had the bulldozer operator clear the disputed area of all flowers, shrubs and trees which Hudson had planted there. (T. 25-26; Exhibit 6)

Hudson file his first complaint on August 12, 2004 (Clerk's Papers 1) seeking to confirm and quiet title to the disputed tract. On August 17, 2004 Hudson filed his first amended complaint to confirm and quiet title, for an adjudication that Hudson owned the disputed 29 foot strip by adverse possession and he also sought damages. (Clerk's Papers 11)

Conliff had a survey of the boundary line conducted in 1996 by Jack Starr (T. 95) and had the property surveyed again by Jack Starr in 2005. (T. 99) After the 2005 survey was conducted Conliff constructed a barbed wire fence which came within 8 feet of the back of Hudson's house and within approximate 3 feet of his back door steps. (T. 37-39).

At the conclusion of the trial the Chancellor took the matter under advisement and in due course rendered an opinion finding that Hudson had acquired title to the disputed 29 foot strip of land by adverse possession. In addition she awarded Hudson a judgment in the amount of \$821 representing the replacement cost of the shrubs and bushes which Conliff had destroyed on the 29 foot strip of land and in addition ordered Conliff to be immediately cease conducting video surveillance of Hudson's residence. (Clerk's Papers 144-146; Record Excerpts 2).

### SUMMARY OF THE ARGUMENT

The Chancellor applied the correct legal standard in her determination that Hudson had acquired title to the disputed property by adverse possession. She found that Hudson began exercising exclusive control over the property in 1978 and that he continued to occupy the property uninterrupted until 1996 when Conliff had the first Starr survey done and then demanded that Hudson sign a lease for the disputed property. The Chancellor found that Hudson's uninterrupted possession of the property matured in 1988 by adverse possession which gave him title to the property. The Chancellor never found that Hudson had abandoned his ownership by signing the lease since title had already matured to him by adverse possession. In order for Conliff to acquire title to the property through adverse possession she was required to exercise all those well-known incidents of ownership for a continuous period of 10 years, which she failed to do because Hudson filed his first complaint to quiet title to the tract on August 12, 2004 and filed his first amended complaint alleging title by adverse possession on August 17, 2004.

Hudson having acquired ownership of the property by adverse possession in 1988 did not lose his ownership by signing a lease with Conliff in 1996 in an effort to keep the peace. However had Conliff continued on her course of exercising control over the disputed property in time she could have reacquire the property by adverse possession.

The Chancellor was correct in her judgment and should be affirmed.

### STANDARD OF REVIEW

The Mississippi Court of Appeals in reviewing a case based upon adverse possession has noted the standard of review as follows:

This Court has a limited standard of review in examining and considering the decision of the Chancellor. *McNeil v. Hester*, 753 So.2d 1057 (¶ 21) (Miss. 2000) "The Chancellor, as the trier of fact, evaluates the sufficiency of the proof based upon the credibility of witnesses and the weight of their testimony." *Fisher v. Fisher*, 771 So.2d 364, 367 (Miss. 2000) (citations omitted) A chancellor's findings will not be disturbed upon review by this Court unless the chancellor was manifestly wrong, clearly erroneous, or applied the wrong legal standard. *Bank of Mississippi v. Hollingsworth*, 609 So.2d 422, 424 (Miss. 1992). "The standard of review employed by this Court for review of a chancellor's decision is abuse of discretion." *McNeil*, 753 So.2d at 1063 (¶ 21). The standard of review for questions of law is de novo. *Consolidated Pipe & Supply Company v. Colter* 735 So.2d 958, 961 (Miss. 1999)

*Gillespie v. Kelly*, 809 So.2d 702, 705 (¶ 9) (Miss.App.2001)

### ARGUMENT

#### ISSUE NUMBER 1:

Whether the Chancellor applied a clearly erroneous legal standard by in effect ruling that Hudson's adverse possession claim was "reactivated" after Hudson acquired the subject property by adverse possession, but then abandoned his ownership by recognizing Conliff's superior title and leasing the property from Conliff for five years.

#### ISSUE NUMBER 2:

Whether the Court erred in its finding of fact that Hudson had satisfied the adverse possession element of claim of ownership, when his entering a lease evidenced that Hudson did not claim ownership.

#### ISSUE NUMBER 3:

Whether the Court committed manifest error by holding the lease between the parties invalid for insufficiency of the legal description.

These issues, as stated by Conliff, are without merit.

Even though Conliff briefs these three issues separately Hudson believes that they are inseparable since they speak to the essential elements of adverse possession and therefore Hudson will brief these together.



Hudson was required at trial to prove by clear and convincing evidence six elements to establish his claim of adverse possession which are: his possession must have been (1) under claim of ownership; (2) actual or hostile; (3) open, notorious, and visible; (4) continuous and uninterrupted for a period of 10 years; (5) exclusive; and (6) peaceful. *Warehouse Management, LLC v. Haywood Properties, LP* 978 So.2d 684, 687 (Miss.App.2008).

### **(1) Under Claim of Ownership**

The Chancellor found that Hudson was claiming ownership of the property as evidenced by Hudson's use of the property. Hudson began to exercise the rights of ownership of the property upon receiving his deed in 1977 or at the latest June 1978 when he completed the construction of his house. Ownership was evidenced by him clearing the land and planting a garden, trees and shrubs and placing a water line on the property which was used to water his plants. Even though it was determined by survey that the disputed 29 foot strip lay outside of the call of Hudson's deed his use of the property was uninterrupted from 1978 until Conliff presented him with a lease in 1996 and it is immaterial that the property lay inside or outside of the land described in his deed.

It does not matter whether land claimed under adverse possession be within or without the 'call of the title deeds,' *Evans v. Harrison*, 130 Miss. 157, 163, 93 So. 737, 738 (1922), or that it be in the same quarter section or section as the land lies which is described in the deed. *Cole v. Burleson*, 375 So.2d 1046, 1048 (Miss. 1979)

*Rice v. Pritchard*, 611 So.2d 869, 871 (Miss. 1992).

Hudson claimed ownership to the property and under *Rice* it makes no difference that some or even all of the 29 foot strip may have been outside of the legal description contained in Hudson's deed.

## **(2) Actual or Hostile**

Hudson's claimed to the property was "actual or hostile". In describing this element the Court of Appeals has stated:

Actual possession is "effective control over a definite area of land, evidenced by things visible to the eye or perceptible to the senses." (citation omitted). An occupant of land who mistakenly believes the land lies within the boundaries established by his own deed, when the land actually belongs to another, may acquire title to that land by adverse possession. (citation omitted).

*Warehousing Management, LLC, supra* at 688 (§ 20)

The Chancellor was correct in her determination that Hudson had proven this element by clear and convincing evidence. Even though Thurman Howard testified that the fence was not the property line and that Hudson's property line was in fact east of the fence, Hudson cleared the land to the fence and began using the property for a garden as well as other uses. It is undisputed that Hudson's actually possessed the property, using it as his own.

## **(3) Open, Notorious and Visible**

The Chancellor was also correct in finding that Hudson had proven by clear and convincing evidence that his occupation was open, notorious and visible. The Chancellor's decision is supported by decisions of both the Mississippi Supreme Court and Court of Appeals.

A "landowner must have notice, actual or imputable, of an adverse claim to his property in order for it to ripen against him, and the mere possession of land is not sufficient to satisfy the requirement of open and notorious." (citations omitted) An adverse possessor "must unfurl his flag on the land, and keep it flying so that the (actual) owner may see, and if he will, that an enemy has invaded his domains, and planted the standards of conquest." (citations omitted)

*Warehousing Management, LLC, supra* at 687 (§ 17).

From the evidence it was clear and convincing that Conliff was a frequent visitor to her property after 1978 when Hudson built his house and began to exercise dominion and control over the 29

foot strip of land. Hudson maintained a garden, planted trees and shrubs, and parked his vehicles and equipment on the strip for Conliff and everybody to see.

Hudson's use was exclusive as was evidenced by him and his family being the only people to use the property. Conliff testified at trial that both parties used the property however, the Chancellor in listening to and weighing the testimony of the witnesses obviously believed Hudson's version of events and gave little or no weight to Conliff's version on the issue of joint use. What was clear and convincing was that it was Hudson's garden, water line, trees and shrubs which occupied the strip of land with Conliff claiming no ownership interest in any of those items. Therefore the Chancellor was correct in her finding that Hudson's occupation of the property in excess of 10 years was exclusive, open, notorious and visible.

**(4) Continuous and Uninterrupted for a Period of 10 Years**

**(5) Exclusive**

**(6) Peaceful**

Hudson's use was also exclusive, peaceful and continuous and uninterrupted for a period of 10 years. Hudson began using the 29 foot strip in June, 1978, at the latest, when he built his house and continued unabated in his use of it until September 24, 1996 at the earliest, when Conliff had the first Starr survey conducted and prepared and had Hudson sign a lease agreement or 2004 at the latest when Conliff bulldozed the old fence. Hudson purchased the property by warranty deed dated October 14, 1977 at which time he went into possession of the property and he completed building his house in June, 1978 (T.19). After completing the house and moving in Hudson began his work to clear the 29 foot strip of brush, etc., install a water line and plant a garden. Hudson continued to use the property exclusively without any interference from Conliff until September 24, 1996 when she demanded that he sign the lease. By that time Hudson had

been in the peaceful, uninterrupted, exclusive possession of the property in excess of 18 years and his title by adverse possession had ripen no later than June 1988. In her brief Conliff seems to take solace in the fact that once she had Hudson sign the lease that Hudson recognized that she had a superior title to the property and somehow at that point the property became hers, however she ignores the well-established law of adverse possession. The Mississippi Supreme Court has held that once the 10 year adverse possession runs that the adverse possessor is invested with a new independent title to the property. *Levy v. Campbell*, 200 Miss. 721, 28 So.2d 224 (Miss. 1946).

Once title has been acquired by adverse possession title can only be lost by transfers such as a deed, will, intestate succession or by another period of adverse possession ripening title in a new adverse user. *Lowi v. David*, 134 Miss. 296, 302, 98 So.2d 684, 685 (1924). And, once adverse title has been acquired it is not relinquished or lost by the new owner (Hudson) indicating a belief in the former owner's (Conliff's) title by doing such things as signing a lease. *Bonds v. Bonds*, 226 Miss. 348, 359-60, 84 So.2d 397, 399-400 (1956).

From and after June, 1988 Hudson owned the disputed tract and the fact that he signed the lease did not change his ownership of the property. At most it can be seen as the beginning of Conliff attempting to acquired title to the property by adverse possession, however, her adverse possession was interrupted before the expiration of 10 years by Hudson's complaint filed in August, 2004.

The Chancellor was correct in adjudicating that Hudson had proven the elements of adverse possession by clear and convincing evidence and thereby vesting title in Hudson.

Conliff takes issue with the chancery court finding that the purported leases between Conliff and Hudson were invalid because of the insufficiency of the legal description, however,

Hudson does not believe this determination by the court makes any difference in the outcome of the case. As discussed above, the lease came approximately 8 years after the title vested in Hudson through adverse possession, therefore whether the description was sufficient or the lease was valid makes no difference. *Bonds, supra*.

#### ISSUE NUMBER 4:

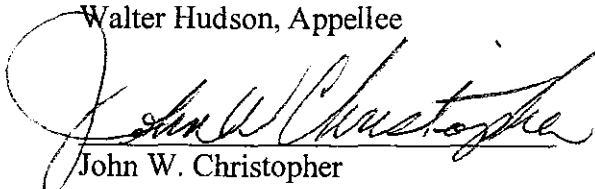
Whether the Court committed manifest error by incorrectly describing the boundary line between the property of the Appellants and the Appellee.

In her brief on this issue Conliff fails to cite any authority in support of her position, therefore, she is procedurally barred from presenting this issue. MRAP 28 (a) (6) provides that the argument shall, inter alia, contain "citations to the authorities, statutes and part of the record relied on." "Failure to comply with Mississippi Rule of Appellate Procedure 28 (a) (6) renders an argument procedurally barred." *Rodgers v. State*, 994 So.2d 792, 800 (¶ 31) (Miss.App. 2008). Therefore, Hudson will not file a response to this issue, however, the issue is without merit since the Chancellor was not manifestly wrong in her determination of the boundary line between the property of Hudson and Conliff as reflected in the judgment.

#### CONCLUSION

The Chancellor was correct in her finding of facts concerning Hudson's adverse possession of the 29 foot strip of land and she correctly applied the law of adverse possession. Therefore, the Chancery Court should be affirmed.

Respectfully Submitted,  
Walter Hudson, Appellee

  
John W. Christopher  
Attorney for Appellee

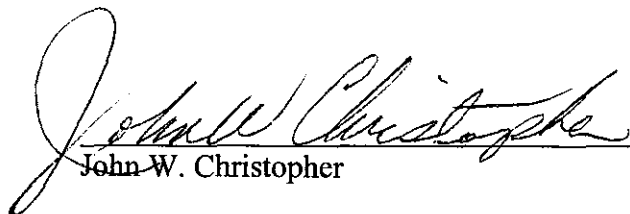
CERTIFICATE OF SERVICE

I, John W. Christopher, attorney for Walter Hudson, Appellee, hereby certify that I have this day mailed, by United States mail, postage prepaid, a true and correct copy of the above and foregoing Brief of Appellee to the following:

Honorable Janace Harvey-Goree  
Chancellor  
P.O. Box 39  
Lexington, MS 39095

K. F. Boackle, Esquire  
Jeffrey L. Lee, Esquire  
BOACKLE LAW FIRM, PLLC  
700 Avignon Drive, Ste. C  
Ridgeland, MS 39157-529

This the 2<sup>nd</sup> day of August, 2010.

  
John W. Christopher