

**IN THE SUPREME COURT OF MISSISSIPPI  
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**REBECCA CONLIFF**

**APPELLANT**

**v.**

**CASE NO. 2009-CA-01803**

**WALTER HUDSON**

**APPELLEE**

**APPEAL FROM THE CHANCERY COURT OF MADISON COUNTY,  
MISSISSIPPI, CHANCELLOR JANACE HARVEY-GOREE**

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**BRIEF OF APPELLANT**

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**ORAL ARGUMENT IS NOT REQUESTED**

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**CERTIFICATE OF INTERESTED PERSONS**

**SUPREME COURT OF MISSISSIPPI  
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**REBECCA CONLIFF**

**APPELLANT**

**v.**

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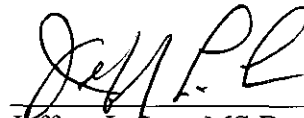
**WALTER HUDSON**

**APPELLEE**

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.

Rebecca Conliff, Defendant below, Appellant here.

Walter Hudson, Plaintiff below, Appellee here.

  
\_\_\_\_\_  
Jeffrey L. Lee, MS Bar No. [REDACTED]  
Attorney of record for Rebecca Conliff

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**SUPREME COURT OF MISSISSIPPI  
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**REBECCA CONLIFF**

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**BRIEF OF APPELLANT**

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COMES NOW, Rebecca Conliff, Appellant, (hereinafter "Conliff"), by and through the undersigned counsel, and files this her brief in support of her appeal of the ruling by the Chancery Court of Madison County, Mississippi (hereinafter "Court") and in support thereof would say and show unto this Honorable Court the following, TO WIT:

***INTRODUCTION***

The case involves a claim of adverse possession by the Appellee in certain real property owned by the Appellant in Madison County, Mississippi ("subject property").

This suit was filed on August 12, 2004 by Walter Hudson, alleging ownership of the subject property by adverse possession. The cause came on for trial on October 10, 2008. On December 10, 2008, the Court rendered an opinion in a telephonic conference, finding that the Plaintiff, Walter Hudson had acquired title to the subject property, a disputed 29 foot-wide by 200 foot-long tract of real property owned by the Defendant, that Walter Hudson should be awarded a judgment for damages in the amount of \$821.00 for destroyed shrubs and plants on the disputed tract, and that Defendant Rebecca Conliff should be enjoined from surveilling any portion of Plaintiff's property and that a video camera used for such purposes should immediately be removed or redirected. The Court ordered Plaintiff's counsel to prepare an opinion and order based on the telephonic conference.

## **STATEMENT OF ISSUES**

### ***ISSUE NUMBER 1:***

Whether the Court 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.

### ***ISSUE NUMBER 4:***

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

## ***STATEMENT OF THE CASE***

1. On or about September 11, 1974, Rebecca S. Bruce, now Rebecca Conliff, and her husband at the time, Emmitt R. Bruce purchased forty acres of an eighty acre tract from the original owner, Thurman Howard, Sr.<sup>1</sup>
2. On or about October 14, 1977, Walter Hudson and his wife, Aslene Hudson purchased the other forty acres of the original eighty acre tract from Thurman Howard, Sr.
3. In 1978, Walter Hudson built a house on the forty acre tract purchased by he and his wife

from Howard.

4. In 1990, following their divorce, Aslene Hudson conveyed ten acres of the forty acres they had purchased from Howard to Walter Hudson.
5. The ten acres conveyed to Walter Hudson in 1990, subsequent to his divorce, abuts the forty acres purchased by Rebecca Conliff and her husband from Thurman Howard, Sr. in 1974.
6. Rebecca Conliff had her forty acre tract surveyed on August 29, 1996 by Starr Surveying, the survey revealing that her boundary line was within approximately eight feet of Walter Hudson's house.
7. On September 24, 1996, Rebecca Conliff and Walter Hudson executed a lease agreement whereby Walter Hudson leased from Rebecca Conliff land described as:

Beginning at the first metal fence post past the southeast corner of the Tractor Barn go South 200 feet turn East to the surveyed line approx. 29 feet turn North 200 feet along surveyed line, turn West approx. 29 feet to the same metal fence post South of the Tractor Barn described as the beginning point.
8. On November 5, 1997, Rebecca Conliff and Walter Hudson renewed the lease of the same described area by signing and executing a new lease. The new lease was to expire November 5, 2002.
9. The land leased by Walter Hudson pursuant to the lease agreements of 1996 and 1997-2002 is within the land Hudson claims by adverse possession in the suit giving rise to this appeal.

***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.**

The standard of review of a chancery court's orders is the substantial evidence/manifest error standard. *Croenne v. Irby*, 492 So.2d 1291, 1294 (Miss. 1986); also, *Lee Hawkins Realty, Inc. v. Phillip W. Moss, et al.*, 724 So.2d 1116 (Miss. App. 1998) wherein it is said that a reviewing court will accept a chancellor's findings of fact so long as the evidence in the record reasonably supports those findings, and will not disturb the findings of a chancellor unless they are clearly erroneous or a clearly erroneous legal standard was applied. Even if this Court were to disagree with the lower court on findings of fact and reach a different conclusion, this Court would still be bound by the Chancellor's findings unless those findings were manifestly wrong or if the wrong legal standard were applied. *Richardson v. Riley*, 355 So.2d 667, 668 (Miss. 1978). By implication, then, if a Chancellor's ruling was based on an erroneous legal standard, that ruling must be overturned.

Recognition of "reactivation" of a prior adverse possession claim is clearly not the legal standard applied by Mississippi courts and is in fact, contrary to the standard set forth recently in *Gillespie v. Kelly*, 809 So.2d 702 (Miss. App. 2001).

Were the lower court's judgment in this case to be affirmed, it would constitute the first such case in Mississippi "where an adverse possession claim has been deemed to be reactivated after a period of time in which use of the property was had by permission." *Id.* at 706-07. This Court must either reverse the Chancellor on this point, or take up the issue raised by Justice Southwick's concurrence in *Gillespie*, and decide "whether the five year period which [Hudson] used the easement [with Conliff's permission] in some fashion constituted an abandonment of his right to the easement and a recognition of Conliff's superior title." *Id.* at 712.

#### ***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.**

The plaintiff claiming ownership by adverse possession must prove six elements by clear and convincing evidence in order to prevail. *Warehousing Mgmt., LLC v. Haywood Properties, LP*, 978 So.2d 684, 687 (Miss Ct. App. 2008) He must prove that his possession is under a claim of ownership; actual or hostile; open, notorious and visible; continuous and uninterrupted for a period of ten years; exclusive and peaceful. *Id.* If a single element of the plaintiff's claim was not proven by clear and convincing evidence, then the claim of adverse possession cannot stand and the lower court must be reversed.

**ISSUE NUMBER 3:**

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

In Mississippi, when the intent of a lessor and lessee are readily apparent, when the property to be leased is easily ascertained, and no confusion is caused by the description of the property within the lease, the lease is not valid for insufficiency of the description. *Harrell v. Lamar Co.*, 925 So.2d 870 (Miss. App. 2005). A legal description within a lease that "enables a surveyor to locate boundaries by following the description" is a sufficient legal description. *Trotter v. Gaddis and McLaurin, Inc.*, 452 So.2d 453 (Miss. 1984). In the instant case, the parties understood the parcel to be leased, the description created no confusion between the parties, and the landmarks used within the description were sufficient to enable a surveyor to locate boundaries. The lease between the parties is not only evidence that Hudson did not claim ownership, it is also a valid agreement under Mississippi law.

**ISSUE NUMBER 4:**

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

The legal description within the judgment describes the intended boundary between land owned by the Conliff and land to be owned by Hudson following the judgment. The legal description is errant in that it lacks at least two directional calls. If the lower court's judgment is affirmed, the case should be remanded so that the judgment can be revised to either grant the disputed portion to Hudson, or correctly describe the new boundary between the parties.

**VII. SUMMARY OF THE ARGUMENT**

This case appears at first blush to be a common one in which the record title holder of land took steps to protect her interest, but took those steps too late. By the time the Defendant realized that her property boundary was not where she thought it was, it seems that another had satisfied the elements of adverse possession through the statutory period and had thus acquired title to a portion of her property. The instant case is actually much more complex, perhaps even raising a novel question of law. The Defendant did not slumber on her rights. She considered the use of the disputed parcel underlying this case to be shared until she had her property surveyed, at which time she offered to lease the shared portion to the Plaintiff. The Plaintiff kept secret any claim he had to the disputed parcel, and willingly entered the proposed lease.

Assuming *arguendo*, that the trial court was correct in its ruling that the Plaintiff had in fact satisfied the requirements in Mississippi to obtain title to property by adverse possession, and that he had done so in or around 1987, the lower court's ruling fails to give any weight or significance to the period from 1996 to 2002 when Hudson leased the property he later claimed to own from Conliff. Hudson's entering into a lease for property he had supposedly obtained adversely raises

the question of whether, even if Hudson had acquired the subject property through prescription, his acknowledgment of another's superior title amounted to an abandonment of his claim.

In the case *sub judice*, the trial court disregarded the importance of the lease between Hudson and Conliff, and in essence ruled that Hudson's recent claim "reactivated" his adverse claim prior to 1996. The trial court did so in part because it found the legal description of the lease between the parties inadequate. The lease between the parties, however, has independent factual significance, regardless of its legal description. When the lease was entered, the parties rights with respect to the subject property had not been determined. Rebecca Conliff believed she owned the parcel of land. She notified Walter Hudson that she owned the disputed parcel. Hudson did nothing to "unfurl his flag" or dispute her ownership. He did not question her position as owner of the disputed portion, a mere eight feet from his house. Conliff offered to lease the land to him. He accepted her offer and entered the lease. Upon the renewal date of the lease, Hudson entered a five-year lease. For the time period of the lease, Hudson entered the subject property with the true owner's permission. Hudson acknowledged the superior title of Conliff and never once gave Conliff notice that he too claimed the disputed portion.

Furthermore, the lease between the parties was in fact, valid under Mississippi law. The parties understood the terms of the lease and the land described. Landmarks and boundaries were sufficient to allow a surveyor to identify the boundaries, and there was nothing in the legal description that caused confusion between the parties about the location or dimensions of the parcel to be leased.

Hudson forewent an opportunity to "unfurl his flag" and give the true owner notice of his adverse claim in 1996 when Conliff offered to lease the property to him. The Plaintiff would forego a second opportunity to give Conliff notice of his claim when he was haled into Madison County

Justice Court in 2003 for trespassing. Hudson paid for Conliff's damages and attorney's fees and never asserted his claim of ownership. Conliff provided Hudson the perfect opportunity to allege his ownership before a judicial forum. He made no such claim.

The lower court's ruling posits that the subject property was not the Appellant's to lease; that the land was already owned by the Appellee as early as 1987. Only one explanation supports the lower court's ruling; that Walter Hudson possessed the subject property adversely from 1977 to 1996, that he possessed the property with permission of Rebecca Conliff from 1996 to 2001, and that his adverse possession lawsuit in August of 2004, "reactivated" the preexisting adverse claim established in 1987. Such a ruling does not reflect the state of the law in Mississippi. The lower court has applied the wrong legal standard. In Mississippi, there is no case that supports the situation where an adverse possession claim has been deemed to be reactivated after a period of time in which use of the property was had by permission. Hudson abandoned his claim to title by adverse possession when he acknowledged Conliff's superior title in 1996. As such, Hudson no longer has a valid claim to the subject property and this Court should reverse the lower court and render for the Appellant.

An adverse possession claimant must satisfy six elements by clear and convincing evidence to prevail in his lawsuit under Mississippi law. Among these elements is a claim of ownership. The lower court failed to consider Hudson's entering of a lease for property he purported to own as evidence that the Hudson could not meet the claim of ownership test of an adverse possession claim.

Finally, in its judgment, the lower court incorrectly described the new boundary line established by Hudson's adverse possession claim. For the foregoing assignments of error, the lower court should be reversed, and a decision favoring the Appellant rendered.

## ***VIII. ARGUMENT***

### ***ISSUE 1:***

In the instant case, the lower court found that Hudson had acquired title to the subject property by adverse possession prior to a lease being executed between Conliff and Hudson, and that therefore, even if the lease between the parties had been valid [if the legal description had been sufficient], “she [Conliff] would have to claim it [the subject property] back and take adverse possession” before the Conliff’s claim could be superior to Hudson’s. In summary, the lower court states that Hudson satisfied all the elements of adverse possession prior to 1996 and his entering into the lease and occupying the property with Conliff’s permission from 1996 to 2002 did not constitute abandonment of his ownership. Under the Court’s ruling, Hudson essentially “reactivated” his prior adverse possession by this lawsuit.

This logic has been rejected by the Mississippi courts. In *Gillespie v. Kelly*, the Court of Appeals held that it had “yet to find any case law in this State where an adverse possession claim has been deemed to be reactivated after a period of time in which use of the property was had by permission.” *Gillespie*, 809 So.2d at 706. The *Gillespie* Court concluded that the “chancellor was in error for holding an adverse possession claim can be reactivated . . .” *Id.* at 709.

Justice Southwick, in concurrence, distinguishes between situations where possession begins with permission (never ripens into adverse possession under Mississippi law) and situations where possession begins *without any permission* from the title owner. *Id.* at 711 (emphasis added). But in either instance, *Gillespie* looks, especially in the concurrence, at events *after* property has been acquired by adverse possession.

In *Gillespie*, the Court held that the appellee had never satisfied the requirements of adverse possession prior to use by permission, and so it was not necessary for the Court to resolve the issue

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faced by this Court. The *Gillespie* concurrence states that if the Court *had found* that the appellee in that case had already acquired an easement by prior possession, the Court would have to consider the issue of whether “the five year period which Kelly used the easement [with Gillespie’s permission] in some fashion constituted an abandonment of his right to the easement and a recognition of Gillespie’s superior title.” *Id.* at 712. The concurrence raised the issue of whether “use of an easement with permission can be an abandonment of the preexisting right to use without permission” but characterized the point as “an avoidable legal point” in that case. *Id.*

The point is not avoidable in the present case. If, as the lower court found, Hudson indeed acquired the disputed property by adverse possession in approximately 1987, did his entering into a lease for land he purported to own constitute an abandonment of his preexisting right to the subject property? If so, then the lower court “reactivated” Hudson’s adverse possession claim with its ruling, contrary to *Gillespie*.

Were the lower court’s judgment in this case to stand, it would constitute the first such case in Mississippi “where an adverse possession claim has been deemed to be reactivated after a period of time in which use of the property was had by permission.” *Id.* at 706-07. Precedent in Mississippi demands a reversal of the trial court. If, however, this Court decides that this is a novel point of law, it must at least take up the issue reached but not decided by *Gillespie*, of whether the five year period which Hudson used the subject property with Conliff’s permission in some fashion constituted an abandonment of his right to the subject property and a recognition of Conliff’s superior title. The Appellant asserts that Hudson’s entering into a lease not only indicates that he never satisfied the claim of ownership element of adverse possession during the statutory period, but also, even if he had, he later abandoned that adverse claim by occupying the land with the true owner’s permission. This case should be reversed and a judgment for the Appellant rendered on the adverse possession

claim.

**ISSUE 2:**

Studies suggest that courts prefer an inadvertent adverse possessor, such as Hudson in the instant case, over one who has nefarious designs to obtain another's land. Christopher H. Meredith, *IMPUTED ABANDONMENT: A FRESH PERSPECTIVE ON ADVERSE POSSESSION AND A DEFENSE OF THE OBJECTIVE STANDARD*; 29 Miss. Col. Law Rev. 257 (2010) (citing Richard H. Hemholz, *ADVERSE POSSESSION AND SUBJECTIVE INTENT*, 61 Wash. U. L.Q. 331,332 (1983.)) The courts tend to favor the good-faith adverse possessor so much, that they may even find a bad faith possessor's claim "lacking by stingily applying one or more of the statutory or common law elements." *Id.* By the same token, courts dealing with a good-faith possessor may relax the application of the elemental standard.

While Hudson never had his property line surveyed or sought to fence in his portion, admittedly entered into a lease for property he purported to own, was adjudged to be trespasser by the Madison County Justice Court, repaid the Appellant for damage to the subject property, and removed trash from the subject property under court order without ever voicing a claim to the land, he still managed to satisfy the lower court on every element of an adverse possession claim clearly and convincingly, including a claim of ownership. The lower court found contrary to the weight of the evidence, particularly on the claim of ownership element, by refusing to recognize the 1996-2002 lease as not only valid, but crucial to the *prima facie* case.

Hudson characterized his willingness to enter a lease with the Appellant as a measure to keep the peace (Trial at 57-58). Combined with Hudson's testimony and a lease that the lower court found as grossly inadequate in its legal description (Ruling at 6), the lower court failed to recognize the independent significance of the lease as negating Hudson's claim of ownership. If Hudson did

not claim ownership, he could not have satisfied the elements of adverse possession during the period of 1977 to 1987 as the court found (Ruling at 5-6).

The facts show that Hudson was found by the Madison County Justice Court to be a trespasser and was ordered to pay Conliff for damages to her property and for attorney's fees. (Trial at 61). Hudson never asserted his claim of ownership during this court proceeding. Not only did Hudson lease the disputed property from its rightful owner, but when his legal claim to the property was challenged, he paid court costs, attorney's fees and damages for his unauthorized use of the property. Such actions are hardly those of one who occupies under a claim of ownership.

The plaintiff claiming ownership by adverse possession must prove six elements by clear and convincing evidence in order to prevail. *Warehousing Mgmt.* 978 So.2d at 687. He must prove that his possession is under a claim of ownership; actual or hostile; open, notorious and visible; continuous and uninterrupted for a period of ten years; exclusive and peaceful. *Id.* As the plaintiff must prove all six, if a single element of the plaintiff's claim was not proven by clear and convincing evidence, then the lower court must be reversed.

The concept that courts favor inadvertent adverse possessors is arguably rooted in a kind of "imputed abandonment" by the true owner – the true owner is viewed to have "slept on his rights" while another encroached, and therefore does not deserve to keep his property. Meredith, 29 Miss. Coll. L. Rev. at 272. After all, the least a land owner can do is to be aware of his boundaries and of trespass into those boundaries by others. In the instant case, however, the Defendant did not sleep on her rights. Her testimony below contradicted Hudson's in that she said they both used the disputed portion prior to 1990. In fact, she bush-hogged the disputed parcel. While Hudson argued that his entering a lease in 1996 was to keep the peace (and the trial court rewarded his deference), Conliff's attempts to exist peaceably with her neighbor, by sharing use of the disputed portion near



the boundary to their respective properties, turned out to be a sword used against her in the trial of this matter. Because she did not have her property surveyed earlier, her shared use of the portion was of no importance to the trial court. Because she did not have her exact boundary determined earlier, her building of a fence in 1990 to keep horses in (not to delineate her property boundary) caused that fence to become a de facto property line.

Hudson's use of the disputed portion was so minimally invasive – planting shrubs and flowers and “cleaning up” (Trial Transcript at 20) – that it never crossed the Appellant's mind that he may assert a claim to the property. She had surveyors come in and erected fences, fully believing that it was her property she enclosed and that she was in no way trespassing. Such action indicates that Hudson had never done anything to give her notice of his claim. The lower court erred in its finding of fact on the element of claim of ownership. The lower court's decision must be reversed and a decision for the Appellant rendered.

### ***ISSUE 3:***

The trial court found that “the legal description that was provided in the lease . . . grossly and inadequately described whatever property that she purported to be leasing to him,” and therefore ruled that “the lease was probably invalid.” (Ruling at 6.) The court concluded the lease description was invalid in that it contained, “no reference to county or state.” (Ruling at 4.) The trial court's ruling proposes that any lease of real property in Mississippi requires something more of its legal description than the lease between Conliff and Hudson contained.

Other jurisdictions have recognized the principle that so long as the parties to a lease understand what is to be leased, a lease between them is valid, despite an otherwise insufficient legal description. A deed conveying the lease of mineral rights was found valid, “so long as it is possible, by any reasonable rule of construction, to ascertain from the description, aided by extrinsic evidence,

the property the lease is intended to convey.” *Consolidation Coal Co. v. Mineral Coal Co.*, 126 S.E. 2d 194 (W.Va. 1962). In one jurisdiction, a lease would not be held void, so long as it “furnishes the key to the identification of the property conveyed.” *Roe v. Doe*, 268 S.E. 2d 901 (Ga. 1980). The underlying principle of these rulings, is that a lease should not be held void between two parties because the legal description within the lease would not be sufficient for a third party. So long as the two parties involved understand the bounds of the lease, then the legal description should be held sufficient.

Other jurisdictions have also held that where a lessee had “entered, occupied and cultivated the premises . . . pursuant to the terms of the lease, and the lessee and lessor had agreed as to the land to be covered by the lease, the description was not uncertain, even though it omitted the range and township.” *Soppe v. Breed*, 504 P.2d 1077 (Wyo. 1973).

Mississippi also recognizes the principle that so long as the parties know what is to be leased, the lease is valid. Perhaps Mississippi has distinguished a lease from a sale, but Mississippi courts have held that so long as the “intent of the parties was readily apparent, the property to be released was easily ascertained, and no confusion was caused by the description” a lease should be held valid. *Harrell*, 925 So.2d at 874. How much more should a lease be upheld when the lessee, in the terms of *Soppe*, supra, has “entered and occupied” pursuant to the lease’s terms, as Hudson has done in the instant case? In the instant case, it defies reason to hold a lease invalid for an insufficient description, when the lessee entered and occupied the land pursuant to the lease for six years. The lease’s validity is evidenced by its endurance. The intent of the parties is readily apparent – they entered and abided by a lease for six years. The property was easily ascertained – there was no boundary dispute during the six years of the lease. No confusion was caused by the description – the lessee/ Appellee offered no evidence to show that he was ever confused about the boundaries of

the leased parcel. As such, the lease between the parties has satisfied the Mississippi standard. Therefore, the lease, and its bearing on the evidence of adverse possession, should have been a factor in the lower court's decision. As it clearly was not, this Court must reverse the lower court on the judgment awarding title to Hudson by adverse possession. It is important to note that while the court found the legal description detailing a twenty-nine foot by two hundred foot parcel inadequate, it adjudged a parcel of land of those exact dimensions belonged to the Appellee by adverse possession. (Ruling at 7).

***ISSUE 4:***

In his Amended Complaint below, the Appellee alleged that the west boundary line of his property was as follows:

Begin at a fence corner marking the apparent Southeast 1/4 of Section 18, Township 11 North, Range 4 East, Madison County, Mississippi; thence go north 00 degrees 00 minutes 00 seconds East for 2,602.64 feet to a point; thence North 90 degrees 00 minutes 00 seconds west for 700.10 feet to the point of beginning marked by a flag and painted bolt and which is also the Southwest corner of Plaintiff's tract; from said point, proceed North 00 degrees 01 minutes 06 seconds East a distance of 1,764.04 feet to a point where there is a found post from the old fence; thence North 00 degrees 29 minutes 17 seconds West a distance of 897.94 feet to a point which is the ancient fence corner marking the Northwest corner of Plaintiff's property.

The Appellee's prayer below asked that this boundary line be established as his west boundary and that any claim by the Appellant for land east of the boundary be canceled, and that he be awarded title to the land east of the boundary by adverse possession. (Docket at 000014, Amended Complaint at 4).

In the lower court's ruling, the court noted that it had no legal description for the land for which the Appellee was asking the court to quiet title. (Ruling at 7). The court asked in its ruling

by telephonic conference for the Appellee to provide it a survey of the twenty-nine foot by two hundred foot strip that he had acquired by adverse possession. (Ruling at 7). However, the court's order did not describe the strip of land obtained by adverse possession. Instead the court attempted to describe the boundary between the two litigants as such:

Commence at a fence corner marking the apparent Southeast 1/4 of Section 18, Township 11 North, Range 4 East, Madison County Mississippi; go thence North 00° 00' 00" East for 2602.64 feet to a point; thence North 90° 00' 00" for 700.10 feet to a point marked by flag and painted bolt; from said point proceed North 00° 01' 06" East a distance of 1764.00 feet to a point where there is a found post from the old fence as it existed on June 15, 2004; thence North 00° 29' 17" West a distance of 897.94 feet to a point which is the ancient fence corner (as it existed on June 15, 2004) and which marks the point of beginning of the boundary line here described; from said point of beginning go South 0° 29' 17" East a distance of 897.94 feet to a point; thence go East 29 feet, more or less, to a fence line thence South 0° 01' 51" a distance of 1726.5 feet, more or less, to the south boundary of the Northeast 1/4 of said section 18.

Not only was the judgment's description different than the relief requested, but the description contained in the court's order is errant. To illustrate the errors contained within the description, they are highlighted in parentheses in the description below:

Commence at a fence corner marking the apparent Southeast 1/4 **("1/4" here was probably meant to be "corner" as this point is 2602.64 feet south of the south boundary of the NE 1/4")** of Section 18, Township 11 North, Range 4 East, Madison County Mississippi; go thence North 00° 00' 00" East for 2602.64 feet to a point; thence North 90° 00' 00" **(no directional signal is given here)** for 700.10 feet to a point marked by flag and painted bolt; from said point proceed North 00° 01' 06" East a distance of 1764.00 feet to a point where there is a found post from the old fence as it existed on June 15, 2004; thence North 00° 29' 17" West a distance of 897.94 feet to a point which is the ancient fence corner (as it existed on June 15, 2004) and which marks the point of beginning of the boundary line here described; from said point of beginning go South 0° 29' 17" East a distance of 897.94 feet to a point; thence go East 29 feet, more or less, to a fence line thence South 0° 01' 51" **(again, no directional signal is given here)** a distance of 1726.5 feet, more or

less, to the south boundary of the Northeast 1/4 of said section 18.

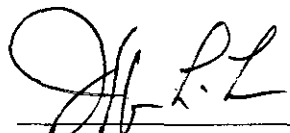
Even if this Court affirms the ruling of the lower court on the adverse possession claim, this Court should remand this cause to the lower court with instructions that the court grant to the Hudson only the twenty-nine foot by two hundred foot parcel that he claimed at trial, and which the court first awarded in its ruling.

### ***IX. CONCLUSION***

As argued earlier, courts have often treated inadvertent adverse possession claimants in a kinder fashion than one who would scheme to obtain land knowingly. However, the Mississippi law is clear. An adverse possession claimant must prove clearly and convincingly six elements to prevail in his cause. In the instant case, the Appellee could not prove a claim to ownership. Rather, the evidence proved that he always recognized the Appellant's superior title to the disputed parcel, and that even had he satisfied all the other elements for adverse possession prior to 1996, in 1996, he abandoned his claim by entering a lease with the rightful owner. Mississippi law presently holds that the lease negating his ownership claim was valid, and that an adverse possession claim cannot be "reactivated" after a period in which the adverse possessor occupies with the owner's permission.

This Court must reverse the lower court's ruling on the adverse possession claim and render a judgment for the Appellant. In the alternative, this Court must remand the case so that the lower court can correctly identify the parcel disputed between the parties and awarded to the Appellee.

Respectfully submitted,

  
\_\_\_\_\_  
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Attorney for Appellant

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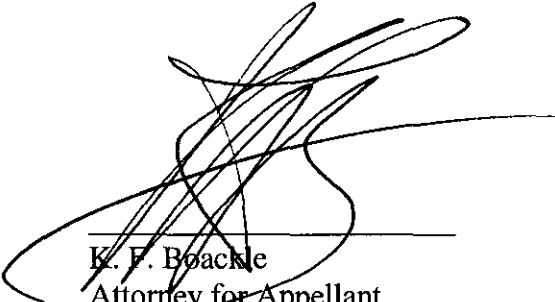
CERTIFICATE OF SERVICE

I, K. F. Boackle, do hereby certify that I have, this day, delivered, a true and correct copy of the above and forgoing BRIEF OF APPELLANT, along with the record, to

Honorable Janace Harvey-Goree  
MADISON CHANCERY COURT JUDGE  
Post Office 39  
Lexington, MS 39095

John W. Christopher  
750 Avignon Drive, Suite 3  
Ridgeland, MS 39157-5299

This the 16<sup>th</sup> day of April, 2010.



K. F. Boackle  
Attorney for Appellant