

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

MARTHA J. STANCIL

APPELLANT

V.

NO. 2009-CA-01962

JAMES TERRY FARRIS

APPELLEE

APPEAL FROM THE CHANCERY COURT  
OF ITAWAMBA COUNTY, MISSISSIPPI

BRIEF OF APPELLANT

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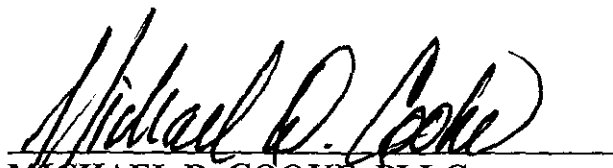
APPELLEE

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Court may evaluate possible disqualification or recusal.

1. Martha J. Stancil / Appellant
2. Michael D. Cooke, Esquire / Attorney for Appellant
3. James Terry Farris / Appellee
4. D. Kirk Tharp, Esquire / Attorney for Appellee
5. R. Shane McLaughlin, Esquire / Attorney for Appellee
6. Talmadge D. Littlejohn / Chancellor 1<sup>st</sup> Judicial District

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "Michael D. Cooke", is written over a horizontal line.

MICHAEL D. COOKE, PLLC  
ATTORNEY FOR APPELLANT

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### **STATEMENT REGARDING ORAL ARGUMENT**

Oral argument is not requested by the Appellant. The facts and legal arguments have been adequately presented in the brief of the Appellant and in the record. The decisional process of this Court would not be significantly aided by oral argument and thus the Appellant states that oral argument is not requested.

**STATEMENT OF THE ISSUES**

- I. THE TRIAL COURT ERRED IN NOT DECLARING THE EASEMENT OF TERRY FARRIS ABANDONED AND SETTING SAME ASIDE**
- II. THE TRIAL COURT ERRED IN GRANTING A PORTION OF THE PROPERTY TO TERRY FARRIS BY VIRTUE OF ADVERSE POSSESSION**

## STATEMENT OF THE CASE

This case initially involved a land line dispute between Sybil Prestage Wilburn, mother of the Appellant, Martha Stancil, herein, and James Terry Farris. An Agreed Order was entered by the parties establishing a line between the parties and granting an easement to James Terry Farris on September 13, 2003. (Record Excerpt, p. 6.) Subsequent to the Order entered by the Court, Sybil Prestage Wilburn conveyed, by Quitclaim Deed, the subject property to her daughter, Martha Stancil. A copy of that Quitclaim Deed was attached to the Complaint for Modification. A Complaint for Modification was then filed in November of 2008 by Martha Stancil alleging that Terry Farris had abandoned the easement and therefore this Court should set it aside in it's entirety. (Record Excerpt, p. 10 & p. 14.)

An Answer to the Complaint for Modification was filed by Terry Farris. (Record Excerpt, p. 17) Terry Farris also filed a Counter-Complaint for Citation of Contempt of Court alleging that he had been denied access to the use and enjoyment of his own property. (Record Excerpt, p.21.) Martha Stancil then filed her Answer to the Counter-Complaint for Citation of Contempt of Court. (Record Excerpt, p. 27.) Some time thereafter, both parties realized that this cause of action might involve adverse possession. Therefore, the attorneys of record agreed that each side would file an amended complaint and amended counter-complaint for adverse possession so that all issues would be before the Court. Terry Farris then filed his Amended Counter-Complaint for Contempt and Adverse Possession. (Record Excerpt, p. 31.) Martha Stancil filed an Answer to the Amended Counter-Complaint for



Contempt and Adverse Possession and filed her Amended Complaint for Adverse Possession. (Record Excerpt, p. 39.) Terry Farris then filed his Answer to the Amended Complaint of Martha Stancil. (Record Excerpt, p. 44.)

A hearing on the merits was held on November 2, 2009 at the Itawamba County Courthouse in Fulton, Mississippi. After the testimony of Martha Stancil, her ex-husband, Allen Stancil, and her son, Destry Stancil, the Plaintiff rested. The Defendant then put on the testimony of J.T. Farris, father of Terry Farris, Gerald Moody, and the Defendant, Terry Farris. In the opinion of Martha Stancil, the testimony did not rise to the level of adverse possession from either party. However, Martha Stancil owns the triangular tract of property in which the Court awarded to Terry Farris by virtue of adverse possession. Subsequent to the Court's opinion rendered in open Court on November 2, 2009, an Order was entered by the Court on November 10, 2009 *nunc pro tunc* for November 2, 2009 denying the request of Martha Stancil to set aside the easement of Terry Farris and granting Terry Farris the triangular piece of property by virtue of adverse possession. (Record Excerpt, p. 109 & p. 127.) Based upon the Court's oral opinion and it's subsequent Order, a Notice of Appeal was filed by Martha Stancil on December 8, 2009. (Record Excerpt, p. 130.)

## SUMMARY OF THE ARGUMENT

Martha Stancil testified that water backed up on Terry Farris' land some time ago, but that she has now built a lake, removed beavers and there is no water on Farris' land. Thus, he has access to the southern portion of his land without using the easement. (Record Excerpt, pages 52 and 53.) Martha Stancil testified that Terry Farris has never bush-hogged the easement or any portion of his property by using the easement until after her modification suit was filed in November of 2008. (Record Excerpt, page 55.) Destry Stancil, the son of Martha Stancil, testified that you could drive from the northern portion of Terry Farris' land to the southern portion of his land now because no water backed up on his land. (Record Excerpt, page 69.)

Gerald Moody, a friend of Terry Farris and one of his witnesses, testified that he deer hunts on Farris' land and he drives to a food plot on the south end of the property because there are food plots and fire lanes throughout the property since it has been sectioned off. (Record Excerpt, pages 74 and 75.) Terry Farris testified that water doesn't back up on his land anymore since Martha Stancil built her lake. (Record Excerpt, p. 77) He further testified that he can get to the southern portion of his land without using the easement. (Record Excerpt, p. 178.) Based upon this testimony, it is apparent that Terry Farris has other access to his property, either through and across his own property or by other means. Therefore, the easement is not a necessity. By virtue of the testimony of Martha Stancil and all of the photographs depicted as Court exhibits 3-1 through 3-43 it is apparent that Terry Farris did

not use the easement nor did Terry Farris bush-hog any portion of his property, the reason for which he claimed he needed the easement. (Record Excerpt, pages 80-105.)

It is clearly established law in Mississippi that once an easement has been abandoned the Court has authority and should set the easement aside. It is also clearly established law that if an individual has access to a portion of their property, even though it may be more inconvenient and more expensive, that an easement is inappropriate and should not be granted. The original easement granted by Martha Stancil's mother to Terry Farris was because Terry Farris could not get to the southern portion of his property due to water backing up on his property from the Wilburn, and now Stancil, property. That was not the case before the Court in November of 2009.

At all times, Martha Stancil's mother and then Martha Stancil owned the triangular piece of property. Martha Stancil testified that her ex-husband, Allen Stancil built the fence on the southerly portion of the triangular area in 1973 or 1975 so that Mattie Thrasher, who lived at the end of the road, could see down the road. (Record Excerpt, pages 47 & 48.) Pine trees were in the triangular area. Allen Stancil cut them down so that Mrs. Thrasher could see down the road. (Record Excerpt, page 49.) Martha Stancil and Allen Stancil lived in the house just to the east of the triangular area until she moved to her present house in 1980. During that time frame, she and Allen Stancil maintained this triangular area. (Record Excerpt, page 50.) Dr. Tom McDonald in Tupelo, owned the Thrasher land at one time, but never maintained it. Martha Stancil never saw Terry Farris maintain the triangular area. (Record Excerpt, page 51.)

Allen Stancil, the ex-husband of Martha Stancil, erected the fence on the public road that was there until he took it down in the mid 1970's. (Record Excerpt, pages 60 and 61.) Allen Stancil created the little triangular area by cutting some trees so Mattie Thrasher could see down the road. (Record Excerpt, pages 61, 62 & 63.) He maintained the triangular area until he moved in the mid 1980's. (Record Excerpt, page 62.)

Destry Stancil, Martha Stancil's son, lived on the two acres immediately east of the triangular area from 1990 until the spring of 2007. He and his dad put up the new fence on the north side of the triangular area. He maintained the triangular area the entire time he lived there from 1990 to 2007. (Record Excerpt, page 64, 65, and 66.) Destry Stancil has never seen Terry Farris maintain the triangular area nor did he ever see Dr. Tom McDonald maintain the triangular area. (Record Excerpt, pages 67 and 70.) Destry Stancil has never seen Terry Farris on the triangular tract of land. (Record Excerpt, page 68.)

J.T. Farris, the father of Terry Farris, admits that the Stancils could have mowed the triangular area because he says the times that he was there the triangular area was pretty clean and it was clean before his son bought it. He assumed then that "somebody mowed it". He testified that he never saw Dr. Tom McDonald mow that property. (Record Excerpt, pages 72 and 73.)

Terry Farris testified that he could not dispute Allen Stancil's testimony about building the fence on the south side of the triangular area or why he built it. (Record Excerpt, pages 76.)

The testimony in this case was such that if one had to put a percentage to it, it would be about 50% for Martha Stancil and 50% for Terry Farris. However, that does not equate to taking property away from the record title holder, Martha Stancil, and conveying it to Terry Farris by adverse possession. The burden of proof on an adverse possession claim is to show by clear and convincing evidence that each element of the adverse possession criteria is met. This is not the case before this Court.

## ARGUMENT

### A. PRELIMINARY STATEMENT

This case initially involved a land line dispute between Sybil Prestage Wilburn and James Terry Farris. An Agreed Order was entered by this Court on September 13, 2003 wherein the land line was established and Terry Farris was granted an easement on the west side of Mrs. Wilburn's property in order that he could access the southern portion of his property for maintenance. (Record Excerpt, page 6.) Subsequent thereto, Mrs. Wilburn conveyed her property to her daughter, Martha Stancil. Martha Stancil then filed a Complaint for Modification in November of 2008 claiming that Terry Farris had abandoned his easement. (Record Excerpt, page 10.) Numerous pleadings were filed thereafter which ultimately resulted in Amended Complaints being filed by both parties alleging adverse possession as it related to a particular triangular piece of land on the northern portion of the Stancil property and just east of the line between Martha Stancil and Terry Farris.

This Court held a trial on this cause on November 2, 2009 at the Itawamba County Courthouse in Fulton, Mississippi. After witnesses had been presented by Martha Stancil and Terry Farris, the Chancellor entered his oral opinion into the record. (Record Excerpt, page 109.) That opinion was followed by an Order signed by the Court on November 10, 2009 *nunc pro tunc* for November 2, 2009. (Record Excerpt, page 127.) The Court ruled that the easement granted to Terry Farris had not been abandoned. The Court further ruled that the triangular piece of land had been acquired by Terry Farris by virtue of adverse possession. By the Court's Order, it totally disregarded the testimony of several of the witnesses who

testified that Terry Farris could get to the southern portion of his property without using the easement. The Court further disregarded numerous photographs filed in this cause of action as Exhibit "3" being approximately forty-three (43) photographs which reflect that Terry Farris had not maintained the southern portion of his property since it had grown up well over head high. (Record Excerpt, pages 80-105.) The Court further disregarded the testimony of witnesses regarding the triangular portion of land when it awarded same to Terry Farris by adverse possession. Martha Stancil was the record title holder to this tract of land.

The testimony, at best, reflected that Martha Stancil and her witnesses indicated that they had maintained that property for numerous years. Terry Farris and one of his witnesses indicated that he had maintained that property. There was no testimony that would rise to the level of clear and convincing evidence that all of the criteria to establish an adverse possession claim had been reached by Terry Farris. The trial Court should not have continued the easement based on the testimony of the witnesses. Likewise, the trial Court should not have awarded Terry Farris the triangular tract of land based upon adverse possession. By failing to set aside the easement previously granted to Terry Farris and by awarding Terry Farris the triangular tract of land on the basis of adverse possession, the trial Court committed manifest error.

**B. THE TRIAL COURT ERRED IN NOT DECLARING THE EASEMENT OF TERRY FARRIS ABANDONED AND SETTING SAME ASIDE**

When this case originally was before this Court in 2003, Terry Farris had a problem of water backing up on his property from the property now owned by Martha Stancil. That problem no longer exists since Martha Stancil has built a lake, removed the beavers and controlled the water problem. (Record Excerpt, pages 52 and 53.) Martha Stancil says that Terry Farris has other access to his property. (Record Excerpt, 54.) Martha Stancil's testimony was that Terry Farris had only bush hogged his portion of the property on the southern end of his property after her current Complaint for Modification was filed. (Record Excerpt, page 55.) One only has to review the photographs admitted into evidence as Exhibit "3" to see that Terry Farris has not maintained the southern portion of the property for which he claimed the easement had been granted to him. (Record Excerpt, pages 52 and 53, and Record Excerpt, pages 80-105.)

Destry Stancil has testified that you can drive from the northern portion of Terry Farris' land to the southern portion of the property without utilizing the easement. He further testified that at the time of the easement, water backed up on the Farris land from his mother's property, but that now there is no water there due to the lake being built. As such, Mr. Farris has been allowed access to the southern portion of his property. (Record Excerpt, page 103.)

Of particular importance is Terry Farris' own witness, Gerald Moody. Mr. Moody testified that he frequently hunts on Terry Farris' land, that he drives to a food plot on the south end of the property, across Mr. Farris' land without using the easement. He further



states that there are food plots and fire lanes throughout Terry Farris' property since it has been sectioned off for fire protection purposes. (Record Excerpt, pages 74 and 75.)

The most important testimony regarding the easement is Terry Farris himself. He testified that water no longer backs up on his property because Martha Stancil built her lake. He states that he can now get to the southern portion of his land without the use of the easement. (Record Excerpt, pages 77 and 78.)

The law in Mississippi regarding easements does not contemplate that one citizen or corporation should be granted a right-of-way to the property of another citizen or corporation merely as a convenience or as a matter of saving expenses. There must be a real necessity before private property of an individual can be invaded by another for the purposes of an easement. The right to control and use one's property is a sacred right, not to be lightly invaded or disturbed. *Roberts v. Prassenos*, 69 So.2d 215 (1954).

When granting a petition for a private road as a means of ingress and egress over the property of another, the road must be reasonably, not absolutely, necessary. The road must be the only reasonable means of ingress and egress for the petitioners. *Reid v. Horne*, 208 So.2d 780 (1968). This Court has previously said that before one may acquire a private roadway over the land of another, he must allege and show that he is unable to obtain a reasonable right-of-way from all surrounding property owners and that there is a real necessity for such right-of-way as opposed to a mere convenience to the petitioner. *Rotenberry v. Renfro*, 214 So.2d 275 (1968).

The case of *Lancaster v. Columbus*, 33 F.Supp. 1012 (1971) is a federal case where the United States District Court for the Northern District of Mississippi determined that a way of necessity does not arise by implication if the claimant has another way of access to his property, however inconvenient that alternate way may be.

This Court has previously determined that a right-of-way by necessity was removed when a land owner was given a substitute easement. *Taylor v. Hays*, 551 So.2d 906 (1989). The case of *Alpaugh v. Moore*, 568 So.2d 291 (1990) is a case that is almost identical factually to the case at bar. The Court in *Alpaugh* determined that a land owner seeking an easement by necessity must be the burden of proof by showing that the property was bound on water by three sides and that the neighbors land provided the only dry access. The comparison to the case at bar is that the present case originally was one where Terry Farris had a reasonable claim because he could not access the southern portion of his property due to water backing up on his land as a result of beaver dams on the land of Martha Stancil. Now that Martha Stancil has constructed a lake and removed the beaver damns, the water has been drained from Terry Farris' property. Thus, he can no longer make a claim for the necessity of an easement because his land is dry and he has access to the southern portion of his property from the northern portion of his property.

Another case that has many similarities to the case at bar is *Broadhead v. Terpening*, 611 So.2d 949 (1992). In this case, the Court said that an easement by necessity lasts or exists only as long as the necessity exists. As such, the easement terminates immediately when other access to the land-locked parcel becomes available. In the case at bar, Terry Farris now

has access to the southern portion of his property across his own property. Therefore, there no longer exists a water barrier as an impediment to Terry Farris reaching the southern portion of his property.

This Court has stated that a petitioner must be prove that the only route that it desires for access to it's property is reasonably necessary and not merely for convenience. *Mississippi Power Co. v. Fairchild*, 791 So.2d 262 (2001).

Easements by necessity are terminable. This Court has determined that easements continue only as long as the necessity exists. In order to continue to have a right of easement by necessity, the party requesting the easement must demonstrate that the property is inaccessible. *Leaf River Forest Prods. v. Rowell*, 819 So.2d 1281 (2002). Terry Farris cannot demonstrate that his property is inaccessible.

The Court of Appeals determined in *Swan v. Hill*, 855 So.2d 459 (2003) that when an alternative route is reasonable for the purpose of a claim for easement by necessity the Court must look to whether the alternative route would involve disproportionate expense and inconvenience to the one requesting the easement by necessity. The Court should not award an easement by necessity when an alternate route exists, although the alternate route may be longer, more inconvenient and more expensive. The Court of Appeals has also determined that when a party asserts a right to an easement by necessity, he must demonstrate strict necessity. He is required to prove that there are no other means of access to his/her property. *Fike v. Shelton, III*, 860 So.2d 1227 (2003). Obviously, this not the case before this Court since Mr. Farris has other access to the southern portion of his property.

Again, the Mississippi Court of Appeals has stated that when granting an easement by necessity, the appellate Court is only concerned with whether an alternative route exists. If no such route exists, then the easement will be considered necessary. However, where other alternative routes exist the appellate Court will grant an easement over the neighboring land owner's property if it is the only reasonably necessary alternative route available. *Burns v. Haynes*, 205 WL 1021471 (2005).

If this Court looks at the law of this state regarding easements, the testimony of the parties in this cause of action, it becomes obvious that Terry Farris did not utilize the easement and therefore abandoned same. It becomes even more obvious, particularly in light of the testimony of Terry Farris, that he no longer needs the easement to reach the southern portion of his property. He now has access to the southern portion of his property, across his own property. (Record Excerpt, pages 77 and 78.) Therefore, the Court erred in not setting aside the easement as it no longer is necessary for Terry Farris to utilize same to reach all of his property.

**C. THE TRIAL COURT ERRED IN GRANTING A PORTION OF THE PROPERTY TO TERRY FARRIS BY VIRTUE OF ADVERSE POSSESSION**

Adverse possession in Mississippi is established by Mississippi Code Annotated §§15-1-7 and 15-1-13.

The Court should look at the testimony of all parties regarding adverse possession. Martha Stancil testified that her ex-husband, Allen Stancil, built the fence in the triangular

area in 1973 or 1975. (Record Excerpt, pages 47.) He cut the trees after he built the fence so Mattie Thrasher, who lived at the end of the road on what is now Terry Farris' property, could see down the road. (Record Excerpt, pages 48 and 49.) Martha Stancil lived in the house just east of the triangular tract of land for years until she moved to her present house in 1980. She and her ex-husband, Allen Stancil, maintained the triangular area during that period of time, keeping down the growth so Mattie Thrasher could see down the road. (Record Excerpt, page 50.) Dr. Tom McDonald bought the property and owned it for a period of time, but he was never seen maintaining the triangular tract of land. Likewise, Martha Stancil never saw Terry Farris maintain the triangular tract of land. (Record Excerpt, page 51.)

The only way Terry Farris could obtain ownership to the triangular tract of land is by adverse possession since Martha Stancil owned the property by virtue of a deed. Terry Farris' attorney, Kirk Tharp, admitted, when crossing-examining Martha Stancil, that she had a deed to the triangular tract of land. (Record Excerpt, pages 50 and 51 and Record Excerpt, page 59.)

Allen Stancil, Martha Stancil's ex-husband, testified that he erected the fence along the public road that was there until he took it down in the mid 1970's. He cut the little triangular shaped area by cutting some small pines so Mattie Thrasher could see down the road. (Record Excerpt, pages 60, 61, 62 and 63.) Allen Stancil erected the fence on the southern portion of the triangular area and maintained that area until he moved in the mid 1980's. (Record Excerpt, page 62.)

Destry Stancil, Martha Stancil's son, lived on the property where Martha Stancil lived after she moved in 1980. This property is immediately east of the triangular tract of land. Destry Stancil lived on that property from 1990 until the spring of 2007. He substantiated his father's testimony that his father, Allen Stancil, built the fence on the south side of the triangular area of land so Mattie Thrasher could see down the road. (Record Excerpt, pages 64 and 65.) He and his father, Allen Stancil, erected the new fence on the north side of the triangular area of land. He maintained the entire triangular area of land during the time that he lived there, from 1990 until the spring of 2007. Record Excerpt, page 66.) Destry Stancil never saw Terry Farris or Dr. Tom McDonald maintain the triangular area of land nor has he ever seen Terry Farris on the triangular piece of land. (Record Excerpt, pages 67, 68 and 70.)

In sharp contrast to the testimony presented by Martha Stancil and her witnesses, Terry Farris presented his father, J.T. Farris, as a witness. Mr. Farris does not know how the fence came to be erected on the southern portion of the triangular area. He had simply assumed it was the line between the properties. (Record Excerpt., page 71.) He admitted that Martha Stancil and her family could have mowed the triangular area and stated that the times he had been there, the triangular area was pretty clean. He further stated that it was clean before his son bought it and it appeared that "somebody mowed it". He further admitted that he never saw Dr. Tom McDonald mow the triangular area of land. (Record Excerpt, pages 72 and 73.)

Terry Farris testified that he could not dispute what Allen Stancil had testified to concerning the building of the fence on the south side of the triangular area or why he built it. He testified that he is claiming the triangular area by adverse possession, not by record title. (Record Excerpt, page 76.)

In order for one to claim property by adverse possession, he must fly a flag over the land and put the true owner upon notice that his land was being held under adverse claim of ownership. *Ellison v. Meek*, 820 So.2d 730 (Miss. Ct. Apps.2002). At no time did Terry Farris fly a flag over the triangular area of land or put Martha Stancil on notice of his claim. This first came to the attention of the Court when the Amended Complaint of Terry Farris was filed shortly before the trial date. There is nothing in the record that indicates that the possessory acts relied upon by Terry Farris are sufficient to put Martha Stancil on notice that he is claiming her lands. That is a requirement under Mississippi law. *Scrivener v. Johnson*, 861 So.2d 1057 Miss. Ct. Apps. 2003), *Cotton v. Cuba Timber Co., Inc.*, 825 So.2d 669 (Miss. Ct. Apps. 2002).

In fact, the Courts have stated that Martha Stancil must have known of and acquiesced in the adverse claim of Terry Farris or the use must be so open, notorious, visible and uninterrupted that knowledge and acquiescence by Martha Stancil would be presumed. *Skates v. Bryant*, 863 So.2d 907 (2003).

One of the fundamental inquiries in determining whether one is entitled to property by adverse possession is whether the person claiming the property by adverse possession exercises such control over the property in the same manner and character as he exercises

over his own property and which he would not have used over the property which did not belong to him. *Houston v. United States Gypsum Co.*, 652 F.2d 467 (5<sup>th</sup> Cir., 1981).

Numerous cases in Mississippi have recited the basic requirements for a claim of adverse possession. There must be six elements of a claim for adverse possession. The possession 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. *Crump v. State*, 823 So.2d 1213 (Miss. Ct. Apps., 2002).

It is apparent that there was no claim of ownership by Terry Farris until such time as his Amended Complaint was filed. There is no evidence that he actually or hostilely possessed the property or that it was open, notorious or visible. Terry Farris claims to have had continuous and uninterrupted use of the property for ten years although Martha Stancil and her witnesses testified that they maintained the property during that period of time. If Martha Stancil's witnesses, including family members, maintained the property for a period of ten years then it was not exclusive.

The burden of proof on one claiming adverse possession is by clear and convincing evidence that each of the six elements of adverse possession is met. *City of Waynesboro v. McMichael*, 856 So.2d 474 (Miss. Ct. Apps. 2003). There are numerous other cases that stand for this proposition but Martha Stancil does not deem it necessary to list every one of them herein. There is simply no way, when one reads the entire record, that all six elements of a claim of adverse possession have been met by clear and convincing evidence presented by Terry Farris. As previously stated, many cases stand for this proposition that it is a



requirement that the elements be met by clear and convincing evidence. Two of those cases are *Linton v. Cross*, 2003 Miss. App. LEXIS 976 (Miss. Ct. Apps. 2003) and *Burgess v. Trotter*, 840 So.2d 762 (Miss. Ct. Apps. 2003).

Martha Stancil would show unto this Court that the testimony before the Chancery Court simply did not rise to the level of clear and convincing evidence on each of the six elements of adverse possession. Terry Farris did not meet those and cannot meet those. As such, this Court should reverse the Chancellor's ruling as to the adverse possession claim to the triangular tract of land wherein the Court gave that tract by virtue of adverse possession to Terry Farris.

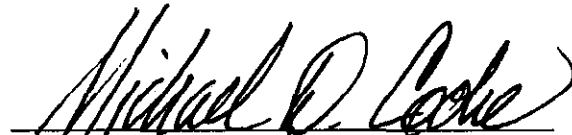
## CONCLUSION

When this Court looks at the law in Mississippi regarding easements and the testimony of all parties before the lower Court then it becomes apparent that Terry Farris did not utilize the easement granted to him in 2003. He, therefore, abandoned same. It is even more obvious when one looks at the witnesses of Terry Farris, including himself, that there is no longer a necessity for the easement since he can reach the southern portion of his property by accessing it from the northern portion of his property. That, in fact, is a more direct way to reach the southern portion of his property than utilizing the easement on the Stancil property. The lower Court therefore erred and committed manifest error in not setting aside the easement previously granted to Terry Farris in 2003 and determining that he had abandoned same. As such, the lower Court should be reversed.

Terry Farris was not able to prove adverse possession on the six basic requirements for a claim for adverse possession. He has failed on the issue of actual or hostile possession; open notorious and physical possession; continuous and uninterrupted possession for a period of ten years; exclusive possession; and probably on the claim of possession under claim of ownership. The testimony of witnesses before the Court really points to Martha Stancil owning the property by adverse possession even if she had not owned it by record title. The only person who really testified that Terry Farris maintained the triangular portion of the property for any period of time was Terry Farris, himself. Terry Farris has simply failed to prove a right to the triangular piece of property by adverse possession as he was not able to prove by clear and convincing evidence each element of a claim of adverse possession. By

granting Terry Farris the triangular piece of property, the lower Court committed manifest error. As such, the lower Court should be reversed.

**RESPECTFULLY SUBMITTED,**

A handwritten signature in black ink, reading "Michael D. Cooke", written over a horizontal line.

**MICHAEL D. COOKE, PLLC**

**MISS. BAR NO. [REDACTED]**

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**CERTIFICATE OF SERVICE**

I, Michael D. Cooke, Attorney for Appellant, Martha Stancil, do hereby certify that I have this day by United States Postal Service, postage prepaid, a true and exact copy of the above and foregoing Brief of Appellant to the following:

R. Shane McLaughlin, Esquire  
Attorney at Law  
Post Office Box 200  
Tupelo, MS 38802

Talmadge D. Littlejohn, Chancellor  
Post Office Box 869  
New Albany, MS 38652

THIS the 2<sup>nd</sup> day of June, 2010.

  
\_\_\_\_\_  
MICHAEL D. COOKE

# APPENDUM

Miss. Code Ann. §15-1-7 .....	28
Miss. Code Ann. §15-1-13 .....	29

## LEXSTAT MISS. CODE ANN. SECTION 15-1-7

MISSISSIPPI CODE of 1972 ANNOTATED

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\*\*\* Current through the 2009 3rd Extraordinary Session \*\*\*

\*\*\* State Court Annotations current through March 10, 2009 \*\*\*

## TITLE 15. LIMITATIONS OF ACTIONS AND PREVENTION OF FRAUDS

## CHAPTER 1. LIMITATION OF ACTIONS

## GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 15-1-7 (2010)

## § 15-1-7. Limitations applicable to actions to recover land

A person may not make an entry or commence an action to recover land except within ten years next after the time at which the right to make the entry or to bring the action shall have first accrued to some person through whom he claims, or, if the right shall not have accrued to any person through whom he claims, then except within ten years next after the time at which the right to make the entry or bring the action shall have first accrued to the person making or bringing the same. However, if, at the time at which the right of any person to make an entry or to bring an action to recover land shall have first accrued, such person shall have been under the disability of infancy or unsoundness of mind, then such person or the person claiming through him may, notwithstanding that the period of ten years hereinbefore limited shall have expired, make an entry or bring an action to recover the land at any time within ten years next after the time at which the person to whom the right shall have first accrued shall have ceased to be under either disability, or shall have died, whichever shall have first happened. However, when any person who shall be under either of the disabilities mentioned, at the time at which his right shall have first accrued, shall depart this life without having ceased to be under such disability, no time shall be allowed, by reason of the disability of any other person, to make an entry or to bring an action to recover the land beyond the period of ten years next after the time at which such person shall have died.

## LEXSTAT MISS. CODE ANN. 15-1-13

MISSISSIPPI CODE of 1972 ANNOTATED

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## TITLE 15. LIMITATIONS OF ACTIONS AND PREVENTION OF FRAUDS

## CHAPTER 1. LIMITATION OF ACTIONS

## GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 15-1-13 (2010)

§ 15-1-13. Ten years' adverse possession gives title; exceptions

(1) Ten (10) years' actual adverse possession by any person claiming to be the owner for that time of any land, uninterruptedly continued for ten (10) years by occupancy, descent, conveyance, or otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title, saving to persons under the disability of minority or unsoundness of mind the right to sue within ten (10) years after the removal of such disability, as provided in Section 15-1-7. However, the saving in favor of persons under disability of unsoundness of mind shall never extend longer than thirty-one (31) years.

(2) For claims of adverse possession not matured as of July 1, 1998, the provisions of subsection (1) shall not apply to a landowner upon whose property a fence or driveway has been built who files with the chancery clerk within the ten (10) years required by this section a written notice that such fence or driveway is built without the permission of the landowner. Failure to file such notice shall not create any inference that property has been adversely possessed. The notice shall be filed in the land records by the chancery clerk and shall describe the property where said fence or driveway is constructed.