IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JANICE HERRINGTON WARD,
WILLIAM LLOYD WARD, JR.,
RITA COLLINS AND LINDA STENNETT **APPELLANTS**

VERSUS **NO: 2009-CA-02025**

TRIMAC INVESTMENTS LLC **APPELLEE**

On appeal from the County Court (Equity Division) of
Forrest County, Mississippi
Case No. 00004-894-E

BRIEF OF APPELLEE

ORAL ARGUMENT NOT REQUESTED

ERIK M. LOWREY, P.A.
Attorneys at Law
Richard A. Filce MSB [redacted]
525 Corinne Street
Hattiesburg, MS 39401
601.582.5015
601.582.5046 (Fax)

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JANICE HERRINGTON WARD,
WILLIAM LLOYD WARD, JR.,
RITA COLLINS AND LINDA STENNETT **APPELLANTS**

VERSUS **NO: 2009-CA-02025**

TRIMAC INVESTMENTS LLC **APPELLEE**

CERTIFICATE OF INTERESTED PERSONS

The undersigned attorney of record for Trimac Investments LLC certifies that the following listed persons have an interest in the outcome of this case. These representations are made for the purpose that the Justices of this Court may evaluate possible disqualification or recusal:

1. Appellee, Trimac Investments LLC
2. Appellants, William Ward, Janice Herrington Ward, Linda Stennett and Rita Collins.
3. Mr. Frank D. Montague, counsel for Appellants Stennett and Collins
4. Mr. Terry Caves, counsel for Appellants Ward and Ward.
5. Richard A. Filce, counsel for Trimac Investments LLC.
6. Hon. Michael W. McPhail, Judge, County Court of Forrest County

This the 4 day of August, 2010

ERIK M. LOWREY, P.A.
Attorneys at Law
Richard A. Filce MSB #100554
525 Corinne Street
Hattiesburg, MS 39401
601.582.5015
601.582.5046 (Fax)

TABLE OF CONTENTS

WAIVER OF ORAL ARGUMENT

The Appellee, Trimac Investments, LLC, submits that oral argument would **not** be necessary or beneficial to the resolution of this case, and submits that the record and brief should be sufficient for the Appellate Court to determine that the decision of the Trial Court should be affirmed.

TABLE OF AUTHORITIES

MISSISSIPPI CASES

TABLE OF AUTHORITIES
(continued)

MISSISSIPPI CASES (continued)

MISSISSIPPI STATUTES

MISSISSIPPI RULES OF CIVIL PROCEDURE

MISSISSIPPI RULES OF EVIDENCE

CASES FROM OTHER JURISDICTIONS

I.
STATEMENT OF THE ISSUE

WHETHER THE CHANCERY COURT ABUSED ITS DISCRETION, WAS MANIFESTLY WRONG, CLEARLY ERRONEOUS, OR APPLIED AN ERRONEOUS LEGAL STANDARD IN DETERMINING THAT ESTABLISHMENT OF A STATUTORY PRIVATE ROAD FOR THE PURPOSES OF INGRESS AND EGRESS WAS REASONABLY NECESSARY

II.
STATEMENT OF THE CASE
AND RELEVANT PROCEDURAL HISTORY

This matter began with a Complaint filed on behalf of Katie Rose McClendon on July 26, 2004 (CP 10). The Complaint alleged various theories of relief to allow access to an 81 acre parcel of landlocked property. (CP 10). After a sale of the property by Ms. McClendon, the Plaintiff obtained leave of Court and filed an Amended Complaint on October 24, 2005, to substitute Trimac Investments LLC ("Trimac") as the party Plaintiff. (CP 21). Answers were filed with all parties joining issue. Subsequently, Defendants William and Janice Ward filed a Third Party Complaint on December 7, 2007. (CP 77) (RE 1). The Third Party Complaint raised a claim against another neighboring property owner, Lynda Beasley Jarrell. The Ward Defendants alleged that Trimac had an implied easement over the Jarrell property which was more reasonable and less intrusive access than the route over the Ward property. (CP 78) (RE 2). However, just ten days later, on December 17, 2007, counsel for the Ward Defendants filed a Notice of Dismissal pursuant to Rule 41 M.R.C.P., which voluntarily dismissed the Third Party Complaint against Ms. Jarrell. (CP 86) (RE 5).

A bench trial was conducted on June 11, 2008, with Plaintiff going forward on the sole claim for establishment of a statutory private road pursuant to Mississippi Code Annotated §65-7-201. The Court issued Findings of Fact and Conclusions of Law on August 12, 2009, stating that the Plaintiff was entitled to the establishment of a private

road over the Defendants' property. (CP 87) (RE 6). By agreement, the parties then set the issue of compensation for a subsequent jury trial. (CP 93). Prior to the jury trial, the Parties reached a settlement as reflected in the Final Judgment Granting Establishment of a Private Road (CP 140) (RE 12). In the Final Judgment, the Court adopted its prior Findings and Conclusions and incorporated a survey of the private road. (CP 140) (RE 12). As part of the Final Judgment, the parties stipulated to the amount of compensation to be paid to the Defendants but reserved the Defendants' right to appeal other issues decided by the Court. (CP 140-141) (RE 12-13). After hearing with oral argument on the Defendants' Motion for Reconsideration, the Court's Judgment became final when it entered an order denying the Motion on December 16, 2009. (CP 152). Defendants filed their Notice of Appeal on December 21, 2009. (CP 153).

III.
STATEMENT OF THE FACTS

Trimac owns approximately 81 acres located just off Eastabuchie Road in Forrest County. (Tr. 15, 25). The property is landlocked, with no access to remove the pine timber contained on it. (Tr. 17). An existing hard bed gravel road, in good condition, extends directly from the Trimac property line, along the boundary of the Defendants' property, to Eastabuchie Road. (Tr. 22, 67, 76). This existing road is the statutory private road which was granted by the Trial Court. (CP 87, 140). This private road has been historically used by Trimac and others to access the subject property with permission of the Defendants' ancestor in title (Tr. 48, 56-57). There are no other existing roads which could provide access to Trimac's land locked property. (Tr. 28).

The private road granted by the Court, in addition to being the only route with an existing hard bed road surface, is the shortest path to a public road – at least 3-4 times shorter than the nearest alternative. (Tr. 21, 67). The road travels over flat terrain, with no water hazards and with established ditches for drainage. (Tr. 59, 76).

The evidence showed the nearest alternative route to be over the property of Lynda Jarrell. By contrast to the existing road, the testimony described the majority of Jarrell route as a winding unimproved path (Tr. 61-62, 71). The terrain is hilly and covered in timber (Tr. 67). The Jarrell alternative route crosses two pipelines and two live streams as well as a water-holding slough which is 200-300 feet wide and extends past the Jarrell property line (Tr. 62-66). One of the pipelines lies unburied but submerged by weights in

the slough. (Tr. 64).

Ms. Lynda Jarrell testified that she is unable to remove timber from large portions of her own property due to the inaccessibility of this alternative route. (Tr. 59). For this reason, Ms. Jarrell historically used the existing road over the Defendant's property with permission of the Wards' predecessor in title (Tr. 56-57). Defendant William Ward disputed that Ms. Jarrell had ever used the road but admitted that he did not live on the property for some 16 years prior to his grandfather's death. (Tr. 123-24).

According to aerial photography and maps in evidence, any other possible routes are considerably farther removed and more difficult to access. (Ex. B and Ex. 3). Testimony established that the properties of the next nearest neighboring landowners contained unsuitable terrain and substantial water obstacles. (Tr. 52-53, 66, 75, 77-78).

IV.

SUMMARY OF THE ARGUMENT

Mississippi Code Annotated §65-7-201, which was formerly administered through the County Boards of Supervisors and now lies within the jurisdiction of the County Court, provides a mechanism for the Court to grant a private road for the purpose of ingress and egress. As amended in 2003, the statute states in pertinent part as follows:

> When any person shall desire to have a private road laid out through the land of another, when necessary for ingress and egress, he shall apply by petition, stating facts and reasons ... The court sitting without a jury shall determine the reasonableness of the application. . . .

Mississippi Code Annotated §65-7-201 (2003).

The necessity required by the statute has been held to mean "reasonable" necessity and not absolute necessity. *Gibbes v. Hinds County Board of Supervisors*, 952 So.2d 1011 (Miss. App. 2007). There are no reasonable alternative routes to the private road granted by the Court. By any measure -- distance to the public road, condition of the path, terrain, obstacles, accessibility, and historical uses -- the private road granted is obviously far more efficient and cost-effective than any alternative. The testimony was clear that the only alternative route in the same vicinity as the one granted by the Court was over the Jarrell property. The disadvantages of the Jarrell route are overwhelming to the point of making it a frivolous suggestion. The table below summarizes the factors considered by the Court in comparing the two routes.

	Road Granted by Court	**Alternative Route (Jarrell)**
Distance to Public Road	1,360 feet (Tr. 67); Shortest path to a public road (Tr. 21)	4,780 feet (Tr. 67)
Condition of Route/Terrain	Existing hard bottom gravel road bed. (Tr, 22, 59, 75-76); Flat terrain, with no water hazards and established ditches for drainage (Tr. 59, 76)	Contains 1215 feet of private gravel drive (Tr. 61), followed by unimproved dirt drive without ditches (Tr. 61-62), then 2,300 feet of trail (Tr. 71); Very hilly and covered in timber (Tr. 67)
Location/Accessibility	Straight line to the public road (Ex. B, Ex. 3, Tr. 21, 67); Runs along the property boundary (Tr. 67)	Winding "question-mark" shaped path (Exhibits B and 3, Tr. 45); Crosses two pipelines (Tr. 62-64), with one running under the trail for 915 feet (Tr. 62); Crosses two live streams (Tr. 64-66); Crosses a 200-300 foot wide slough area in which one of the pipelines lies sunk with weights (Tr. 62-66)
Use for Timber Removal	Has been previously used to access the property for removal of timber (Tr. 48, 56, 73, 116-17)	Jarrell unable to access own timber over her own property. (Tr. 59)

Defendants claim that an implied easement exists over the Jarrell property in favor of Trimac, and that this supposed easement must be used to access the property rather than the statutory private road. This attempt to force Trimac to seek a route over the Jarrell property is inconsistent with the law. First, Defendants waived any such argument

when they voluntarily dismissed their Third Party Complaint against Lynda Jarrell which asserted the primacy of the alleged implied easement. (CP 78, 86) (RE 2, 5). Second, Defendants' own expert admitted, and the law is clear, that an implied easement does not exist automatically. (Tr. 102). Trimac would have to file suit, prove that the Jarrell route was reasonably necessary, and obtain a Judgment granting an implied easement. *Leaf River Forest Products v. Rowell,* 819 So. 2d 1281, 1284 (Miss. App. 2002); *Burns v. Haynes*, 913 So. 2d 424, 430 (Miss. App. 2005). No law requires the implied easement to be pursued to the exclusion of a statutory private road.

Despite the numerous and overwhelming disadvantages of the Jarrell route, Defendants also claim that the Judgment granting a private road should be reversed for a failure of evidence showing the dollar cost of each alternative route. Neither the statute nor the caselaw has ever created such a requirement. To the contrary, this Court has repeatedly affirmed the granting of private roads without such dollar-cost proof where the evidence showed the disproportionate advantage of one route over the others. *Vinoski v. Plummer*, 893 So.2d 239 (Miss. App. 2004); *Fike v. Shelton*, 860 So.2d 1227 (Miss. App. 2003); *Aplaugh v. Moore,* 568 So.2d 291, 295 (Miss. 1990); and *Rotenberry v. Renfro* 214 So.2d 275 (Miss. 1968). The trial Court properly exercised its discretion in determining that the weight of the evidence proved the **reasonable** necessity required to grant a private road.

Defendants further argue that Trimac failed to plead or otherwise show that they had, prior to bringing the lawsuit, unsuccessfully attempted to purchase access from every neighboring landowner. In addition to being contrary to the elements of the statute, such a standard would be an undue burden. Moreover, this assertion is an affirmative defense which was not pled by Defendants and has therefore been waived. *Price v. Clark*, 21 So.3d 509 (Miss. 2009).

V.

STANDARD OF REVIEW

The Court will not interfere with the findings unless the trial judge was "manifestly wrong, clearly erroneous or an erroneous legal standard was applied." *Bell v. Parker,* 563 So. 2d 594, 596-97 (Miss. 1990). If there is substantial evidence in the record to support the findings of fact, those findings must be affirmed here. *Johnson v. Hinds County,* 524 So.2d 947, 956 (Miss.1988); *Culbreath v. Johnson,* 427 So.2d 705, 707-08 (Miss.1983).

VI.

ARGUMENT

a. Defendants waived their implied easement argument

Defendants William and Janice Ward filed a Third Party Complaint raising a claim against neighboring property owner, Lynda Jarrell. (CP 77) (RE 1). The Wards alleged that Trimac had an implied easement over the Jarrell property which provided "more reasonable" and "less intrusive" access to the Trimac property than the route Trimac sought over the Ward property. (CP 78) (RE 2). However, the Wards voluntarily dismissed the Third Party Complaint against Ms. Jarrell. (CP 86) (RE 5). If Defendants truly believed in the factual and legal supremacy of the alleged implied easement over Ms. Jarrell's property, they should have pursued the Third Party claim. By intentionally and voluntarily dismissing Ms. Jarrell as a party to the action, the Defendants waived any such argument and should be estopped from asserting that the implied easement exists and/or that the implied easement should foreclose the creation of a statutory private road. Rule 41(a), Miss.R.Civ.P. *See Dockins v. Allred*, 849 So.2d 151 (Miss. 2003).

b. An implied easement over the Jarrell property does not exist and Trimac is not required to pursue such an easement to the exclusion of seeking a private road

Contrary to Defendants' position, an implied easement by necessity over the Jarrell property does not exist automatically. The Wards called an expert witness in an attempt to establish that Trimac had a claim of implied easement. The expert witness, Jerry

Sharp, is an attorney practicing in the office of the Ward's trial counsel, Terry Caves. (Tr. 92). Mr. Sharp admitted on cross-examination that an implied easement could not exist without a lawsuit being filed and a judgment being obtained. (Tr. 102). In order to be entitled to a right of way across another's land by implied easement, the claimant must first satisfy the burden of proof by showing reasonable necessity. *Leaf River Forest Products v. Rowell,* 819 So. 2d 1281, 1284 (Miss. App. 2002); *Burns v. Haynes*, 913 So. 2d 424, 430 (Miss. App. 2005). Moreover, the law requires the Court to consider the interests of all surrounding landowners before granting such an easement, i.e. the Court must balance all facts and circumstances to find the best route. *Mississippi Power Company v. Fairchild*, 791 So.2d 262, 266 (Miss. App. 2001). These are required **judicial** findings before the implied easement can be valid.

No Court has ever held that the common law remedy of easement by necessity is exclusive or that it is in any way preferred to the statutory remedy. To the contrary, the Courts have established that the remedies are not mutually exclusive. In *Vinoski v. Plummer*, 893 So.2d 239 (Miss. App. 2002), the Vinoskis took the position that the Plummers had to invoke the statutory remedy of M.C.A. 65-7-201 before they could ask for an equitable remedy. The Court of Appeals found to th contrary, stating that "This issue is without merit." *Id. See also, Rogers v. Marlin*, 754 So.2d 1267 (Miss. App. 1999).

Courts in several sister States have also squarely rejected the notion put forward by

Defendants that the mere right to bring a legal action for an implied easement should preclude an action for a statutory private road. *See, Jenkins v. Miller*, 180 P.3d 925 (Wyo. 2008) (landlocked property owners cannot be forced to pursue remedies such as an implied easement prior to seeking a private road, noting that the applicable private road statute contained no such requirement); *Luloff, Matter of*, 512 N.W.2d 267 (Iowa 1994) (action for private road is not barred just because property owners have right to sue for easement, stating "...a legal right to compel an easement of necessity is not the equivalent of an existing way."); and, *Horner v. Heersche*, 447 P.2d 811, 202 Kan. 250 (Kan. 1968).

c. Expert testimony of the dollar cost of each route is not required

The showing of "necessity" required by the statute means only **reasonable** necessity and not absolute necessity. *Gibbes v. Hinds County Board of Supervisors*, 952 So.2d 1011 (Miss. App. 2007), *Quinn v. Holly,* 146 So.2d 357, 359 (1962). Courts have discussed this as a lesser evidentiary burden than required for an implied easement by necessity: "... proof of necessity for an implied easement is greater than that required for invocation of the statutory remedy." *See Quinn,* 146 So.2d at 359 (1962); and *Wills v. Reed,* 86 Miss 446, 38 So.793, 795 (1905). In further explaining the standard, the Court of Appeals in *Daley v. Hughes,* 4 So.3d 364 (Miss. App. 2008), stated as follows: "The Mississippi Supreme Court has stated that reasonable necessity 'should be judged by whether an alternative would involve disproportionate expense or inconvenience.'"

The use of the term "disproportionate" throughout the caselaw connotes that the cost

comparison is not one of mathematical precision, but one founded on reasonableness, consistent with the standard of reasonable necessity. Expert testimony of the exact dollar cost of alternative routes is not required, especially where the facts show overwhelmingly that one route is more efficient and convenient. Several published opinions illustrate this point.

In *Vinoski v. Plummer*, 893 So.2d 239 (Miss. App. 2004), the chancellor determined that an easement following the property line was the most direct and reasonable route, noting that it was clearly less onerous than the alternative, which was only a trail, with rugged terrain and over which it would have obviously cost substantially more to create access. In affirming, the Court noted: "The Vinoskis fail to demonstrate that the chancellor's findings are an abuse of discretion or are manifestly wrong. This issue is without merit." *Id.*

Likewise, the Court in *Fike v. Shelton*, 860 So.2d 1227 (Miss. App. 2003), affirmed the grant of a 50-foot wide easement located over an already-existing road bed where the alternative routes were impractical due to numerous tress and drainage ways which would require culverts. In *Aplaugh v. Moore,* 568 So.2d 291, 295 (Miss. 1990), the Mississippi Supreme Court held that the landowners seeking an easement by necessity met their burden of establishing reasonable necessity "by a showing that they have no other dry access to their land." Likewise, the Supreme Court of Mississippi in *Rotenberry v. Renfro* 214 So.2d 275 (Miss. 1968), did not find it necessary to inquire into the costs associated with building a bridge.

The purpose of the statute is to create an efficient, cost-effective method to place land-locked property back into commerce. *Mississippi Power Company v. Fairchild*, 791 So.2d 262 (Miss. App.2001) (the law will not permit property to sit without access to a public road, rendering it useless and valueless and removing it completely from commerce). This purpose would be largely undermined by establishing a requirement for expert testimony in all such cases, no matter how clearly the facts may prove the superiority of the route selected by the trial judge as the trier of fact.

None of the cases cited by Defendants, which do discuss evidence of cost, have the type of overwhelming facts which were found by the Trial Judge below. The fact that Ms. Jarrell has been unable to remove her own timber over her own property, even without the other evidence, is proof of the practical and financial infeasibility of this alternative route. As Ms. Jarrell testified, "Nobody has ever figured a financially feasible way to cross it." (Tr. 66). Further, as the Court stated in its Findings:

> **The other routes would require a road be built when here, the Defendants' road already exists on the proposed access. In itself, this indicates a sufficient showing of a less disproportionate expense and inconvenience in contrast to other alternative routes.**

(CP 91) (RE 10).

Moreover, Defendants' reference to the alleged costs of damages to be incurred in using the private road are not relevant to this appeal. Statutory private roads, unlike implied easements, require payment of reasonable compensation, which compensation has already been made in this case pursuant to the parties' stipulation. (CP 140-41) (RE 12-13).

The idea that the Trial Judge lacked the discretion to grant this private road because he did not hear evidence of the precise dollar figures for each alternative route is inconsistent with the established precedent of this Court. It is worth noting that the cases cited by Defendants simply affirmed the denial of a private road and deferred to judges' discretion as finder of fact, which is the same level of deference that should be given to the Trial Judge as finder of fact in the case at bar.

Following it through to its logical conclusion, Defendants' position would create an absurd result. If Trimac did sue Jarrell for an implied easement, Jarrell would have a built-in defense that the implied easement is not reasonably necessary because there is available statutory access over the short, flat, existing road bed on the Defendants' property. The potential for such endlessly circular defenses is like a hall of mirrors. Each adjoining landowner could point the finger to the next one over. At some point, there must be a route, and the Court in this case had considerable factual evidence to support its exercise of discretion in choosing the route granted over Defendants' property.

d. There is no requirement that Plaintiff make offers to purchase easements from farther-removed landowners before seeking a private road

Defendants claim that the Judgment should be reversed due to the lack of evidence showing that Trimac sought to purchase access from every neighboring landowner before filing suit. Defendants cite to *Hooks v. George County*, 748 So.2d 678 (Miss. 1999), which in turn cited to *Whitefort v. Homochitto Lumber Co.*, 130 Miss. 14, 26, 93 So. 437, 439 (1922) for the proposition that the plaintiff must show, "that he has been unable to acquire

such right by contract." Neither case states that this would mandate pre-suit attempts to purchase the right from every possible adjoining landowner.

This mis-interpretation of the caselaw, in addition to being contrary to the statute, would create an undue burden on land-locked property owners. As the Court below ruled, it is not reasonable, or even possible, for a plaintiff to seek routes over an infinite number of possible paths to an infinite number of distant roads. (CP 92) (RE 11). Plaintiff's representative testified at trial that an effort was made to obtain access prior to filing suit. (Tr. 17). The "lack of offer" defense is, at best, just one of many factors which the Court properly took into consideration in determining the ultimate issue, i.e. that the Trimac proved a **reasonable necessity** for use of the private road over Defendants' property.

Moreover, this argument is an affirmative defense which was not pled by Defendants and has therefore been waived. An affirmative defense which is neither pled nor pursued prior to trial is waived. *Price v. Clark*, 21 So.3d 509 (Miss. 2009). Counsel for Trimac properly asserted that the affirmative defense had been waived at the oral argument for Defendants' Motion to Reconsider. (Tr. 143). Defendants are accordingly procedurally barred from raising this defense of lack of pre-suit demand for the first time at trial. Therefore, this assignment of error should be overruled.

e. Jarrell's testimony was not hearsay and did not result in error

Defendants claim that Lynda Jarrell was improperly permitted to testify to hearsay. In the subject testimony, Ms. Jarrell states that the pipeline owner did not allow her to cross

the pipeline. (Tr. 62). As the transcript shows, the Court below properly sustained the objection as to out of court statements, and permitted testimony as to the ultimate conclusion, i.e., that she could not cross the pipeline. (Tr. 62). Therefore, no hearsay was admitted. *See* Rule 801, Miss. R.Ev.

Moreover, there is no indication in the Court's findings that the lack of permission from the pipeline company to cross the line on the Jarrell property was in anyway one of the bases, let alone the sole basis, for the Court's decision. Therefore, any error, if the Court were to find error, would be harmless and this assignment of error without merit.

f. There is no basis for Defendants' claim for attorney fees

Defendants also argue that the Court erred in not granting them attorney fees. However, Defendants offered no evidence at trial of the amount or reasonableness of attorney fees, and provide no basis in the record for finding that the Court erred as a matter of law in failing to grant attorney fees. *Dynasteel Corp. v. Aztec Industries, Inc.*, 611 So.2d 977 (Miss. 1992). This assignment of error is without merit.

VII.

CONCLUSION

The Trial Court did not abuse its discretion, was not manifestly wrong or clearly erroneous, and did not apply an erroneous legal standard in its ruling that Trimac is entitled to a statutory private road over Defendants' property for the purpose of ingress and egress. The Court correctly found that the private road was reasonably necessary to prevent Trimac's property from being perpetually landlocked and removed from commerce. There is ample evidence in the record of this case to support the exercise of discretion by the Court below to find that any other alternative to the private road, which was granted over an existing hard-bed gravel road surface, would involve "disproportionate expense or inconvenience." For these reasons, Trimac respectfully submits that the Judgment of the Court below should be affirmed.

RESPECTFULLY SUBMITTED this the 2 day of August, 2010.

Trimac Investments, LLC

By: _____
Richard A. Filce

ERIK M. LOWREY, P.A.
Richard A. Filce MSB[redacted]
525 Corinne Street
Hattiesburg, MS 39401
601.582.5015
601.582.5046 (Fax)

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JANICE HERRINGTON WARD,
WILLIAM LLOYD WARD, JR.,
RITA COLLINS AND LINDA STENNETT **APPELLANTS**

VERSUS **NO: 2009-CA-02025**

TRIMAC INVESTMENTS LLC **APPELLEE**

CERTIFICATE OF SERVICE AND FILING

I, Richard A. Filce, do hereby certify that I have this date mailed, by United States mail, postage prepaid, a true and correct copy of the above and foregoing Brief of Appellee to the following persons at their usual mailing addresses:

Mr. Frank D. Montague, counsel for Appellants Stennett and Collins
P.O. Drawer 1975
Hattiesburg, Mississippi 39403-1975

Mr. Terry Caves, counsel for Appellants Ward and Ward.
P.O. Box 167
Laurel, MS 39441

Hon. Michael W. McPhail, Judge, County Court of Forrest County
P. O. Box 190
Hattiesburg, MS 39403-0190

I, Richard A. Filce, Attorney for the Appellee, hereby certify that I have actually mailed this date the Original and three copies of the Brief of the Appellee to the Mississippi Supreme Court.

THIS, the 2 day of August, 2010.

Richard A. Filce