

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
CASE NO.: 2010-TS-00017SCT

**BETTY ARNOLD, RONNIE ARNOLD
AND JERRY ARNOLD,**

APPELLANTS

vs.

**WAYNE HIGHT, Individually and d/b/a
FORREST MEMORIAL PARK, MAGNOLIA
FUNERAL HOME, INC., CLAYTON LEROY
BROWN, Individually, FICTITIOUS DEFENDANT
"A" AND FICTITIOUS DEFENDANT "B,"**

APPELLEES

**ON APPEAL FROM
THE CIRCUIT COURT OF ALCORN COUNTY, MISSISSIPPI
CAUSE NO. CV: 09-366-PA**

**BRIEF FOR APPELLEES
WAYNE HIGHT, Individually and d/b/a FORREST MEMORIAL PARK**

SUBMITTED BY:

**CLAYTON O'DONNELL, PLLC
WILLIAM H. DAVIS, JR.
MBN: [REDACTED]
511 FRANKLIN STREET
P.O. BOX 1613
CORINTH, MS 38835-1613
TELEPHONE: (662) 396-4808
FACSIMILE: (662) 396-4805
E-MAIL: bdavis@claytonodonnell.com
ATTORNEYS FOR APPELLEES WAYNE
HIGHT AND FORREST MEMORIAL
PARK**

ORAL ARGUMENT NOT REQUESTED

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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 Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Betty Arnold, Rienzi, Mississippi, Appellant;
2. Jerry Arnold, Rienzi, Mississippi, Appellant;
3. Ronnie Arnold, Rienzi, Mississippi, Appellant;
4. Wayne Hight, Corinth, Mississippi, Appellee;
5. Forrest Memorial Park, Corinth, Mississippi, Appellee;
6. Magnolia Funeral Home, Inc., Corinth, Mississippi, Appellee;
7. Clayton Leroy Brown, Corinth, Mississippi, Appellee;
8. Honorable Jim Pounds, Circuit Court Judge;
9. Greg E. Beard, Esq., Attorney for Appellants;
10. William H. Davis, Jr., Attorney for Appellees Wayne Hight, individually and d/b/a Forrest Memorial Park;

11. Jonathan S. Masters, Esq., Attorney for Appellees Magnolia Funeral Home and Clayton Leroy Brown.

CLAYTON O'DONNELL, PLLC

BY


William H. Davis, Jr., MSB# 

Attorney of Record for Appellees Wayne Hight,
Individually and d/b/a Forrest Memorial Park

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STATEMENT OF THE CASE

The Circuit Court of Alcorn County correctly determined that a valid and binding arbitration agreement existed between the Plaintiffs and Defendants Wayne Hight and Forrest Memorial Park, and properly ordered both arbitration of Plaintiffs' claims against them and a stay in the case pending the outcome of such arbitration. Such decision was soundly based on the law and the facts and should therefore be affirmed.

Plaintiffs' claims arise out of the burial of Ernest Eugene Arnold in Forrest Memorial Park. On or about March 22, 1983, Ernest Eugene Arnold (hereafter "Ernest") and Betty Arnold (hereafter "Betty"), purchased two burial plots in Forrest Memorial Park. (Rec.Ex. p.1, Rec. p.10, Forrest Memorial Park Deed). Ernest died on December 31, 2008. Thereafter Betty contacted Forrest Memorial Park and arranged for Ernest's burial. On January 2, 2009, Betty and a representative of Forrest Memorial Park executed a document entitled "Legal Interment Order," and Betty paid the requisite interment fee for Ernest's burial. (Rec.Ex. p.2, Rec. p.11, Legal Interment Order). Unfortunately, rather than being buried in the plot which Ernest and Betty bought in 1983, Ernest was mistakenly buried in a nearby plot a few spaces away.

The Interment Order Betty signed authorizing the burial contained the following language clearly permitting Forrest Memorial Park to correct any such mistakes in Ernest's burial:

I also authorize said Memorial Park to correct any mistake(s) that may occur concerning location, price, actual burial, and to make necessary decisions in order to cause this interment to be consummated with dignity. Said Memorial Park has my permission to direct any or all of the proceedings or committal service on the Memorial Park grounds before, during and after if so desires [sic].

(Rec.Ex. p.2, Rec. p.11, Interment Order)(emphasis added). In accordance with this clear authorization and permission granted by Betty, Forrest Memorial Park corrected the mistake

made in Ernest's burial, and moved his body a few plots over to the grave site he and Betty previously purchased.

In addition to authorizing Forrest Memorial Park to correct mistakes in the location of the burial, the Interment Order signed by Betty also contains the following arbitration clause:

I, as well as my, his or her heirs, executors, administrators, successors, and assigns, agree to have any and all disputes resolved by arbitration and do give up the right to a court or jury trial as well as the right of appeal.

(Rec.Ex. p.2, Rec. p.11, Interment Order)(emphasis added). By this clear language, Betty agreed, for herself and her sons (the other Plaintiffs) to binding arbitration of the precise claims asserted in the Complaint.

Plaintiffs filed suit as a result of Hight and Forrest Memorial Park's correcting the mistake in Ernest's burial. In accordance with the parties' prior agreement in the Interment Order, these Defendants filed their Motion to Compel Arbitration and Stay Proceedings Pending Arbitration. After considering the briefs and hearing the arguments of the parties, the Circuit Court granted the Motion to Compel Arbitration. The Circuit Court properly considered the legal standard applicable to motions to compel arbitration and specifically found as follows:

The Court has considered each of the three required elements to enforce an arbitration agreement as espoused in East Ford, Inc. v. Taylor, 826 So.2d 709, 713 (Miss. 2002), and finds that all three elements have been met in this case. Specifically, the Court finds and concludes that (1) a valid arbitration agreement exists and was signed by Plaintiff Betty Arnold, (2) the parties' dispute is within the scope of the arbitration agreement, and (3) there are no external legal constraints foreclosing arbitration.

(Rec.Ex. p.3, Rec. p.78, Circuit Court Order).

Because the Circuit Court properly applied the facts and the law in determining that a valid and enforceable arbitration exists between Plaintiffs and Defendants Hight and Forrest Memorial Park, and in ordering arbitration of Plaintiffs' claims against these Defendants, its decision should be affirmed.

SUMMARY OF THE ARGUMENT

Mississippi law favors the enforcement of arbitration agreements. As the Circuit Court found, the instant case deals with a valid and enforceable arbitration agreement requiring arbitration of Plaintiffs' claims against Defendants Wayne Hight individually and d/b/a Forrest Memorial Park. (Rec.Ex. p.3-5, Rec. p.78-80, Order).

The Interment Order is not a contract of adhesion, and the court below properly rejected Plaintiffs' arguments to that effect. Plaintiffs presented no evidence that Betty was in any way forced to sign the Interment Order, that she objected to any part of the Interment Order, or that she asked for and was denied a request to change the same. In contrast, by Betty's own admission she was not concerned with whether there was any arbitration agreement in the Interment Order, nor did she read the same. She cannot now complain about a document that she not only did not read, but which she would have signed in any event. Plaintiffs further presented no evidence that the Interment Order was unconscionable in any regard. The Circuit Court thus properly concluded the Interment Order was not a contract of adhesion.

Nor does the Interment Order authorize an illegal act. Plaintiffs' attempt to apply "grave-robbing" statutes to this private cemetery is without merit, and frankly, absurd. Mississippi Code Annotated §41-43-47 gives cemetery owners the right to make reasonable rules for the control and management of a cemetery. The Interment Order specifically gave contractual authority to Forrest Memorial Park to correct mistakes in the actual burial location of Earnest Arnold, which is clearly permitted statutorily and contractually. The Circuit Court properly rejected this frivolous argument.

Finally the dispute at issue – correcting a mistake in the burial location of Ernest Arnold – is clearly within the scope to the arbitration agreement. By signing the Interment Order to have her husband buried at Forrest Memorial Park, Plaintiff Betty Arnold expressly agreed that

Forrest Memorial Park could correct any mistakes in the actual burial of Ernest. Such a mistake was made and was corrected. Plaintiffs have now filed this suit as a result of correcting this mistake. This same Interment Order which provides for Ernest's burial and the correction of mistakes therewith, clearly provides that all disputes between the parties would be resolved by arbitration. Unquestionably, the dispute concerning correcting the mistake with Ernest's burial is squarely within the scope of the arbitration clause, as the lower court properly determined. This argument is without merit.

The decision of the Circuit Court finding a valid and enforceable arbitration agreement exists, and ordering arbitration of Plaintiffs' claims against Hight and Forrest Memorial Park was imminently correct and should be affirmed.

ARGUMENT

I. MISSISSIPPI LAW FAVORS ENFORCEMENT OF ARBITRATION CLAUSES.

Mississippi's arbitration statute provides in pertinent part:

All persons, . . . may, by instrument of writing, submit to the decision of one or more arbitrators any controversy which may be existing between them, which might be the subject of an action, and may, in such submission, agree that the court having jurisdiction of the subject matter shall render judgment on the award made pursuant to such submission.

Miss. Code Ann. §11-15-1. Mississippi courts heavily favor arbitration agreements. As this Court stated in IP Timberlands Operating Co. v. Denmiss Corp., 726 So.2d 96, 107 (Miss. 1998), "Mississippi has long observed a policy of favoring agreements to arbitrate, and this Court hesitates to disturb an agreement that knowledgeable and experienced parties freely entered into." Further, "Doubts as to the availability of arbitration must be resolved in favor of arbitration. Unless it can be said with positive assurance that an arbitration clause is not susceptible of an interpretation which would cover the dispute at issue, then a stay pending arbitration should be granted." IP Timberlands, 726 So.2d at 107 (internal citations and quotation marks omitted).

This Court has further noted that "Mississippi case law regarding arbitration and the Federal Arbitration Act are consistent with one another." Id. Thus, even in cases where the Federal Arbitration Act may not apply, this Court has said it would follow the case law which interprets the federal Act. University Nursing Assoc., PLLC v. Phillips, 842 So.2d 1270, 1276 n.6 (Miss. 2003). Under these principles, the Court has instructed that:

In determining the validity of a motion to compel arbitration under the Federal Arbitration Act, courts generally conduct a two-pronged inquiry. The first prong has two considerations: (1) whether there is a valid arbitration agreement and (2) whether the parties' dispute is within the scope of the arbitration agreement. . . . Under the second prong, the United States Supreme Court has stated the question is "whether legal constraints external to the parties' agreement foreclosed

arbitration of those claims.” Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 626, 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985).

East Ford, Inc. v. Taylor, 826 So.2d 709, 713 (Miss. 2002). Thus, even in cases where the Federal Arbitration Act is not implicated, arbitration should be compelled where: (1) a valid arbitration agreement exists, (2) the parties’ dispute is within the scope of the arbitration agreement, and (3) there are no external legal constraints foreclosing arbitration. The Circuit Court specifically considered these elements of the East Ford, Inc. test and found each element was satisfied in this case, making the lower court’s ordering arbitration and staying the case pending arbitration imminently proper. (Rec.Ex. p.3-5, Rec. p.78-80, Order). As such, the Order of the Circuit Court compelling arbitration should be affirmed.

II. ISSUE 1: THE INTERMENT ORDER DOES NOT CONSTITUTE A CONTRACT OF ADHESION.

Plaintiffs’ argument that the Interment Order constitutes an unenforceable contract of adhesion is without merit, is unsupported by the evidence, and was properly rejected by the Circuit Court below. Plaintiffs’ argument fails on a number of grounds.

First, as the Circuit Court found, Betty was not forced to sign the Interment Order (Rec.Ex. p.4, Rec. p.79, Order). Betty therefore was not forced to bury Ernest at Forrest Memorial Park. While Ernest and Betty did own burial plots in Forrest Memorial Park, no evidence was proffered by Plaintiffs to show that Betty could not have buried Ernest in any other area cemetery. Had Betty objected to any part of the Interment Order, she could have contacted another cemetery, purchased new plots and had Ernest buried there, just as numerous persons purchase cemetery plots for the first time at the unexpected death of a loved one. Plaintiffs offered no evidence that Betty attempted to do so or that she was precluded from doing so.

Second, as the court below found, Plaintiffs presented no evidence that Betty objected to any part of the Interment Order (including the arbitration provision), or that she asked for and

was denied a change to the language thereof. (Rec.Ex. p.3-4, Rec. p.78-79, Order). Without such evidence Plaintiffs cannot claim this was a “take it or leave it” contract. In fact, the 1983 deed conveying the burial plots contained a clause which was *stricken from the document*, indicating to Betty that contracts with these Defendants could in fact be modified. (Rec.Ex. p.1, Rec. p.10, Deed). Because there is no evidence that Betty objected to the arbitration language or requested any change to the document, Plaintiffs’ arguments alleging lack of meaningful choice fails.

Third, Plaintiff stated in her Reply to Defendant’s Motion to Compel Arbitration below that she “was not concerned with the document which she was signing, nor whether it contained an arbitration clause.” (Rec.Ex. p.7, Rec. p.74, Pls. Reply Brief). This admission is of critical importance. Since Betty admits she would have signed the Interment Order *regardless of its contents*, she should be judicially estopped from asserting this same Interment Order is an unconscionable contract of adhesion.

Fourth, Betty makes clear that she did not even read the Interment Order, claiming in her Affidavit below that, she would not have signed “had I known that the arbitration clause had been included in the documents.” (Rec.Ex. p. 8, Rec. p.49, Aff. of Betty Arnold). Failure to read a document, however, is not a defense to its enforcement. “It is well settled under Mississippi law that a contracting party is under a legal obligation to read a contract before signing it.” Terminix Int’l, Inc. v. Rice, 904 So.2d 1051, 1056 (Miss. 2004)(citing McKenzie Check Advance of Miss., LLC v. Hardy, 866 So.2d 446, 455 (Miss. 2004)). Further, “in Mississippi, a person is charged with knowing the contents of any document that he executes.” Terminix Int’l, Inc., 904 So.2d at 1056 (citing Russell v. Performance Toyota, Inc., 826 So.2d 719, 725 (Miss. 2002)). Betty is thus charged with knowing the contents of the Interment Order she signed, and where she failed to do so, she cannot complain of its terms.

Fifth, although Plaintiffs assert in their Brief that Betty was restrained from contracting with another party, there is not one shread of evidence presented to support this bald allegation, and it should be summarily rejected. See Parks v. Parks, 914 So.2d 337, 341 (Miss.Ct.App. 2005)(quoting Touchstone v. Touchstone, 682 So.2d 374, 380 (Miss. 1996))(stating Supreme Court considers only those matters that appear in the record and does not rely upon mere assertions in briefs); King v. State, 857 So.2d 702, 718 (Miss. 2003)(noting reviewing Court does not act upon innuendo and unsupported representations of fact or assertions in briefs, but upon matters in the record).

Finally, even assuming, *arguendo*, that the Interment Order could be considered a contract of adhesion (which is denied), that alone does not invalidate the arbitration provision. “[F]inding a contract to be one of adhesion does not automatically mean that the contract or any provision thereof is substantively unconscionable.” Covenant Health & Rehabilitation of Picayune, L.P. v. Estate of Moulds ex rel. Braddock, 14 So.3d 695, 701 (Miss. 2009). Although Plaintiffs make the bare, unsupported and conclusory allegation that the terms of the Interment Order were “unreasonably unfavorable,” Plaintiffs neither identify any allegedly unreasonable term nor explain how such a term is unreasonable and thus unconscionable. Far more than bald allegations is required from Plaintiffs to establish an agreement is unconscionable.

In summary, the Interment Order is not a contract of adhesion, and Plaintiffs have failed to produce any evidence to the contrary. The Circuit Court concluded that “Plaintiffs have failed to show that the agreement was procedurally unconscionable, substantively unconscionable or was procured under duress.” (Rec.Ex. p.4, Rec. p.79, Order). The court below thus correctly determined that the arbitration agreement contained therein was valid and enforceable, and that there exist no external constraints foreclosing arbitration. (Rec.Ex. p.3-4, Rec. p.78-79, Order). As such, the Circuit Court’s Order compelling arbitration should be affirmed.

III. ISSUE 2: THE INTERMENT ORDER DOES NOT PERMIT AN ILLEGAL ACT.

Plaintiff's second argument seems to be that the Interment Order somehow permits the violation of two criminal statutes, and therefore is not binding. Clearly the Circuit Court properly rejected this argument.

Miss. Code Ann. §§97-29-19 and 97-29-25 make it a crime to dig up a dead body for mere wantonness or to sell or desecrate the same. In essence, these statutes target grave-robbing. For Plaintiffs to brazenly assert that these Defendants' actions in correcting a mistake in actual burial in their own cemetery, as they were permitted to do by contract, somehow constitutes the crime of grave-robbing is patently offensive and utterly absurd.¹ No criminal violation occurred here, as is clear from the fact that Plaintiffs presented no evidence that any criminal charges have ever been levied against these Defendants with respect to the moving of Ernest Arnold's body. This attempt to apply "grave-robber" statutes to a cemetery owner in this circumstance is completely without merit.

In truth, Miss. Code Ann. §41-43-47 gives these Defendants the right to do exactly as they have done, providing, "The owner of any cemetery may make and enforce reasonable rules and regulations for the use, care, control, management, restriction and protection of such cemetery." As stated above, the Interment Order (which references §41-43-47 in its title) gives these Defendants the explicit right to take the action complained of, since Betty agreed that: "I also authorize said Memorial Park to correct any mistake(s) that may occur concerning location, price, actual burial. . ." (Rec.Ex. p.2, Rec. p.11, Interment Order). How else could the cemetery correct any mistake in the location of the actual burial, other than moving the body? Plaintiffs' argument that this language refers only to a single interment ignores the elementary fact that

¹ In fact, Plaintiffs acknowledge on page 9 of their Brief that cemetery owners should "of course" be treated differently than "someone who randomly disturbed a grave site."

correcting a mistake in the location of the actual burial must necessarily involve a disinterment and re-interment as well.

Section §41-43-47 clearly gives these Defendants the right to contractually provide for the correcting of mistakes in burial, which they did. Plaintiffs admit this fact on page 8 of their Brief when they concede the parties *could* contractually provide for disinterment and re-interment. What Plaintiffs ignore, however, is that the Interment Order *is* such a contract providing these Defendants authority to correct any mistakes in “location” and “actual burial.” (Rec.Ex. p.2, Rec. p.11, Interment Order). Again, there is no way to correct a mistake in the location of a burial without disinterment and re-interment. By valid contract entered pursuant to §41-43-47, these Defendants had full authority to do exactly as they did.²

The actions complained of were not illegal, and the Interment Order and arbitration agreement contained therein do not condone any illegal action whatsoever. The Circuit Court was clearly correct in rejecting this frivolous argument from Plaintiffs.

IV. ISSUE 3: THE PARTIES’ DISPUTE IS CLEARLY WITHIN THE SCOPE OF THE ARBITRATION AGREEMENT.

Finally, Plaintiffs complain that the actions taken by Defendants were outside the scope of the contract, and thus the arbitration clause does not apply. Again, this argument falls flat, as the parties dispute regarding the burial of Ernest Arnold is clearly within the scope of the arbitration agreement, as the Circuit Court properly found.

As an initial matter, consent to correct mistakes in the burial of Ernest Arnold was unquestionably given. As noted *supra*, by executing the Interment Order, Betty agreed as follows:

² Although Plaintiffs assert in passing that there was “no meeting of the minds” on the issue of disinterment and re-interment, this issue was not raised in the court below, and is not a proper issue on appeal. Notwithstanding this fact, the Circuit Court found a valid contract existed between the parties. (Rec.Ex. p.3, Rec. p. 78, Order).

I also authorize said Memorial Park to correct any mistake(s) that may occur concerning location, price, actual burial, and to make necessary decisions in order to cause this interment to be consummated with dignity. Said Memorial Park has my permission to direct any or all of the proceedings or committal service on the Memorial Park grounds before, during and after if so desires [sic].

(Rec.Ex. p.2, Rec. p.11, Interment Order). Clear permission is granted here to correct mistakes in Ernest's actual burial, including mistakes in location. Further, similar authorizations to correct such mistakes are contained within the other contracts between the parties. The documents evidencing the purchase of the plots, the vaults and the grave marker all contain the following language:

That the company may repair, remove, replace, or correct any and/or all mistakes in reference to shrubs, statues, driveways, walks, memorials, vaults, interments, etc., to the best of its ability without legal dispute from the Purchaser, his or her heirs, executors, administrators, successors, and assigns.

(Rec.Ex. p. 11, Rec. p.39, Purchase of Plots; Rec.Ex. p. 13, Rec. p.41, Purchase of Vaults; Rec.Ex. p. 16, Rec. p.44, Purchase of Grave Marker;). Unquestionably, Defendants had authority and permission to correct any mistakes which occurred with respect to the burial of Ernest Arnold. Plaintiffs' assertions to the contrary are simply factually incorrect.

Obviously, the entire Interment Order deals with the burial of Ernest Arnold. The Interment Order, signed by Betty Arnold, contains the applicable arbitration provision, which provides, "I, as well as my, his or her heirs, executors, administrators, successors, and assigns, agree to have any and all disputes resolved by arbitration and do give up the right to a court or jury trial as well as the right of appeal." (Rec.Ex. p.2, Rec. 11, Interment Order). The instant case involves a dispute about correcting a mistake in Ernest's burial, which is undeniably the clear subject of the Interment Order and which is obviously within the contemplation of the arbitration clause contained therein. Again, how else could such a mistake as to the location of a burial to be remedied except for disinterment and re-interment? Given that correcting mistakes

in the actual burial location of Ernest is clearly contemplated by the Interment Order, the Circuit Court properly found that the parties' dispute in this case concerning the disinterment and re-interment to correct such mistake, was "within the scope of the arbitration agreement," and that "the arbitration provision of the Legal Interment Order is clearly applicable in this case." (Rec.Ex. p.3-4, Rec. p.78-79, Order). The Circuit Court was imminently correct in this determination, and should be affirmed.

Plaintiffs note in passing that there is no arbitration provision contained within the documents evidencing the purchase of the plots, vaults or grave marker. However, this case does not involve any dispute over the purchase of the plots, vaults or grave marker. Rather, the dispute between the parties in this case involves the *burial* of Eugene Arnold, which burial is the subject of the Interment Order in which the arbitration agreement is contained. Plaintiffs' argument on this issue is a mere red herring.

Plaintiffs forthrightly concede that there are no Mississippi cases which support their position on this issue. Even the two Texas cases, which Plaintiffs claim are "almost exactly on point," are clearly not applicable as there is no indication in either case that the cemetery had spousal consent to correct mistakes in the burial, which Forrest Memorial Park had in the instant case. Further, in Hines v. Evergreen Cemetery Assoc., 865 S.W.2d 266 (Tex.Ct.App. 1993), the decision revolved around whether the plaintiffs there qualified as "consumers" under the Texas Deceptive Trade Practices Act – clearly not an issue in this case – and the statement quoted by Plaintiffs was rendered as *dicta* in the context of such discussion. In the other case of Nixon v. Collins, 421 S.W.2d 682 (Tex.Ct.App. 1967), the court was construing a specific Texas statute requiring the consent of the surviving spouse before removing a body. Not only have Plaintiffs identified no corresponding statute in Mississippi, but if they had, such consent here was clearly given by Betty in executing the Interment Order. These cases are clearly inapplicable.

Acknowledging the lack of Mississippi cases on alleged wrongful disinterment, Plaintiffs cite two Mississippi cases dealing with the factors to be considered by a court in an exhumation proceeding. Not only does this case not involve a court ordered exhumation, but this argument was not raised below and should not be considered on appeal. The remaining authorities from other states are not only not controlling here, but deal with spousal consent, which is clearly present in this case. None of these cases support Plaintiffs' arguments in this appeal. With no Mississippi law to support their position on this issue, Plaintiffs have failed to show, and in fact cannot show, any error by the Circuit Court below.


The subject of the Interment Order is the burial of Ernest Arnold, and specific permission is granted therein to correct mistakes in such burial. Such Interment Order also contains the applicable arbitration provision. Unquestionably, the dispute between the parties regarding correction of the mistake in Ernest's burial is within the scope of the Interment Order generally, and the arbitration provision specifically. The Circuit Court was correct in so finding, and Plaintiff's arguments on appeal are without merit.

CONCLUSION

The decision of the Circuit Court finding a valid and enforceable arbitration agreement exists, and ordering arbitration of Plaintiffs' claims against Wayne Hight and Forrest Memorial Park was imminently correct and should be affirmed.

RESPECTFULLY SUBMITTED, this the 6th day of December, 2010.

CLAYTON O'DONNELL, PLLC

BY 
William H. Davis, Jr., MSB# [REDACTED]
Attorney of Record for Defendant Wayne Hight,
Individually and d/b/a Forrest Memorial Park

OF COUNSEL:
Clayton O'Donnell, PLLC
511 Franklin Street
P.O. Box 1613
Corinth, MS 38835-1613
(662) 396-4808
(662) 396-4805 (facsimile)

CERTIFICATE OF SERVICE

I, WILLIAM H. DAVIS, JR., attorney of record for Defendant Wayne Hight, Individually and d/b/a Forrest Memorial Park, do hereby certify that I have this day mailed in the United States Mail, postage prepaid, a true and correct copy of the above and foregoing Brief for Appellees to the Circuit Court Judge and counsel of record at their usual mailing addresses as follows:

Hon. Jim S. Pounds
Circuit Court Judge
P.O. Drawer 1100
Tupelo, MS 38802-1100

Greg E. Beard, Esq.
Greg E. Beard, P.A.
Post Office Box 285
Booneville, Mississippi 38829

Jonathan S. Masters, Esq.
Holcomb Dunbar, P.A.
P.O. Drawer 707
Oxford, Mississippi 38655-0707

THIS, the 6th day of December, 2010.



WILLIAM H. DAVIS, JR.