

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

**LAURA M. YARBROUGH**

**APPELLANT**

**VS.**

**CASE NO. 2010-CA-00391**

**ANN MORRISON PATRICK**

**APPELLEE**

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ON APPEAL FROM THE CHANCERY COURT OF THE  
THE FIRST JUDICIAL DISTRICT  
OF HINDS COUNTY, MISSISSIPPI  
JUDGE J. DEWAYNE THOMAS PRESIDING  
JUDGMENT ENTERED MARCH 10, 2010

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**APPELLEE ANN MORRISON PATRICK'S  
REPLY BRIEF**

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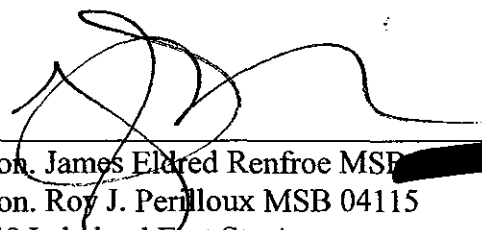
**APPELLEE**

**CERTIFICATE OF INTERESTED PARTIES**

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. Laura M. Yarbrough, Appellant
2. Ann Morrison Patrick
3. The Honorable J. Dewayne Thomas, Chancellor and Trial Court Judge in the above action
4. James Eldred Renfroe, Roy J. Perilloux, and H. Fariss Crisler III, Attorneys for Ann Morrison Patrick
5. W. O. Chet Dillard and Harry J. Rosenthal Attorneys for Laura M. Yarbrough

Dated this the 11<sup>th</sup> day of October 2010.

  
\_\_\_\_\_  
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## **STATEMENT OF THE CASE**

### **A. Nature of Case, Course of Proceedings and Undisputed Facts**

That per the complaint as filed in the lower court action, on January 6, 2003, Laura L. Yarbrough executed a deed conveying two parcels of land to Ann Morrison Patrick ( R 3 ) and to an unnamed party to this action, Arlie Andrew Patrick ( Ex 4 & 5 ).<sup>1</sup> That per the complaint, that on or about this time some sums were transferred to Ann Morrison Patrick through adding her name to certificate of deposits ( R 3 ).<sup>2</sup>

That more than 3 years after this transfer and in fact more than approximately 6 years, Appellant filed a complaint to set aside the transfers based upon undue influence ( R 1-5 ). That in no place in this complaint is it alleged that her named was forged on any documents with Appellant's position changing at the trial of this matter alleging she never signed any document ( Tr. 22 Lines 18-19 and Tr. 29 Lines 5-29 ). That at the trial of this matter Appellant asserted that she did not sign the complaint that was filed in this action on March 4, 2009 and in fact asserted this was signed by the Appellee, Ann Morrison Patrick ( Tr. 36 Lines 28-29 to Tr. 37 1-12). That at the time she executed the documents she was 83 years old and at the time she executed the complaint asserting she transferred the property she was 89 years old ( Tr. 6 Line 14). That during this time, Appellant's son and person who testified on her behalf lived next door to Appellant and Appellant's other daughter Alethia Davis actually lived with Appellant (

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<sup>1</sup> It is stated in the complaint that she executed a deed; however, at the trial of this matter Appellant testified that she did not sign these deeds despite her stating she did in her sworn complaint ( Tr. 22 Lines 18-19).

<sup>2</sup> It is stated in the complaint that she transferred the certificates of deposit; however, at the trial of matter Appellant testified that she did not sign over any certificates of deposit ( Tr. 29 Lines 5-29).

Tr 44 Lines 16-28 ). That prior to the aforementioned transfers, Appellant executed a Last Will and Testament on October 7, 1999 ( Ex. 3 ).<sup>3</sup>

That Appellee has asserted through this action that a suit to set aside any transfer is outside the scope of the statute of limitations ( R 12 ). Despite this and without necessity of ruling upon this issue, the Lower Court ruled that there was never any proof of the amount of money transferred and that there was never any undue influence perpetrated by Ann Morrison Patrick in any of the transfers ( R 53 ). Likewise, the Chancellor found that after hearing all of the testimony of all parties, that Appellant had given a lot of money to her other children and that this was nothing more than an inter vivos gift to Appellee. ( R 53 ). Likewise, as she was attempting to allege forgery at the trial, the Chancellor ruled she did not prove any elements of her complaint ( R 54 ).

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<sup>3</sup> Appellant though stating she signed this in the complaint and with supporting testimony by the Hon. Vernon Chadwick, the attorney that prepared the will, she testified at trial that she did and did not sign the will and despite the will being placed into evidence that appointed Ann Morrison Patrick executrix, Appellant testified that she did not appoint her executrix ( Tr. 18-20).

**STATEMENT OF ISSUES PRESENTED BY APPELLANT**

- I. WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW BY HAVING PLACED THE BURDEN OF PROOF ON THE PLAINTIFF (APPELLANT) TO PROVE UNDUE INFLUENCE WHEN THE LAW PROVIDES THAT THERE IS A PRESUMPTION OF UNDUE INFLUENCE, AND THE BURDEN IS ON THE DEFENDANT (APPELLEE) TO MEET THE BURDEN OF PROOF ON MATTERS OF TRUSTS AND GIFTS INTER VIVOS**
- II. WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW FOR NOT HAVING FOLLOWED THE GUIDELINE MANDATED BY THE COURT REGARDING ELEMENTS FOR GIFT INTER VIVOS**



### **SUMMARY OF ARGUMENT**

Laura M. Yarbrough presented no evidence of a confidential relationship for undue influence at the trial of this matter and in fact, it is unclear what she was attempting to prove as she claimed undue influence in her complaint, but claimed forgery at the trial of this matter with no evidence to support same. Laura M. Yarbrough failed to name all parties in this suit who received the property so any and all relief she may be entitled to is limited for the failure to name all indispensable parties. Furthermore, as all of these accusations and attempts to set aside the transfer of the property is some 6 years or more after the transfer, they are all barred by the applicable case law and statute of limitations.

## **ARGUMENT**

**I. WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW BY HAVING PLACED THE BURDEN OF PROOF ON THE PLAINTIFF (APPELLANT) TO PROVE UNDUE INFLUENCE WHEN THE LAW PROVIDES THAT THERE IS A PRESUMPTION OF UNDUE INFLUENCE, AND THE BURDEN IS ON THE DEFENDANT (APPELLEE) TO MEET THE BURDEN OF PROOF ON MATTERS OF TRUSTS AND GIFTS INTER VIVOS**

The Mississippi Supreme Court has stated that

“Facts asserted to exist must and ought to be definitely proved and placed before us by a record, certified by law; otherwise, we cannot know them.”

*Mason v. State* 440 So. 2d 318, 319 (Miss. 1983).

When this Court reviews the Lower Court ruling combined with the evidence proffered at the trial to support their claims as asserted in Laura M. Yarbrough’s (hereinafter Appellant) complaint, it will properly determine that no evidence was presented to constitute any level of undue influence. Appellant’s complaint may have asserted claims of undue influence; however, during the hearing of the matter she repeatedly either stated outright or alluded to claims that Ann Morrison Patrick (hereinafter Appellee) committed forgery, claims not made in her pleading and claims that changed during the course of the trial.

Despite this glaring oversight, Appellant committed the most basic error that this Court should review as such oversight limits and ceases the litigation at hand. The deeds introduced by Appellant at the trial clearly indicate they were executed January 6, 2003 ( Ex 4 & 5 ) and that the complaint was filed March 4, 2009 ( R 1 ). Likewise the certificate of deposits placed into evidence indicated that they were issued October 21, 2002 ( Ex 6 ) to both Appellant and Appellee giving the Lower Court the only date of possible execution for undue influence.

The Court in *McWilliams v. McWilliams* reviewed and rendered upon the aforementioned exact same issue. The claims were subject to a three statute of limitations. The court stated as follows in regards to Frank McWilliams the person seeking to set aside the conveyance:

Frank did not bring suit to set aside the land deed transfer or resulting trust on the basis of fraud until approximately six years after the warranty deed and trust were recorded in the chancery clerk's office. He seeks a finding that the chancery court should have applied the ten-year statute of limitations of *Mississippi Code Annotated Section 15-1-7*, and, thus, his complaint would not be time-barred. However, when a complaint is brought to set aside a land transfer based upon an alleged fraudulent conveyance, the three-year statute of limitations, found in *Mississippi Code Annotated Section 15-1-49*, begins running once the complainant either discovers, or should have discovered with due diligence, the property transfer. *O'Neal Steel, Inc.*, 797 So.2d at 875-76 (24-26). Therefore, Frank's complaint, predicated upon fraud, was to be filed within three years of the transfer, or within three years of the time he would have discovered the transfer using due diligence. The ten-year statute of limitations set out in *Mississippi Code Annotated Section 15-1-7* cannot be applied to Frank's suit, as this statute only governs actions to recover land and presupposes the complainant is asserting a possessory interest in the land in question

*McWilliams v. McWilliams*, 970 So.2d 200 (Miss.App.,2007) citing *O'Neal Steel, Inc. v. Millette*, 797 So.2d869 (Miss. 2001).

In *McWilliams*, Appellant was arguing undue influence on the transfer of his property to his son. The Court in *McWilliams* stated that this was a transfer of property therefore a possessory interest suit as contemplated under *Mississippi Code Annotated Sec. 15-1-7* is based upon claims similar to adverse possession, claims not asserted in this case. Laura M. Yarbrough's claims have been strictly claims of undue influence as filed in her complaint, as appealed in her brief and as argued in Court with the exception that at Court she added the additional claims of possible forgery as she asserted she did not sign any documents including the complaint that was filed in this action (Tr 36-37).

Likewise in filed pleadings in the Lower Court, Appellant has asserted that concealed fraud tolls the statute of limitations. The problem with this argument is this is the exact same

argument that Frank McWilliams made in the above case. This Court's opinion specifically wrote:

Frank alternatively argues that his complaint to set aside the warranty deed and trust is not time-barred due to the tolling of the statute of limitations under the doctrine of concealed fraud. While Frank is correct in asserting that concealed fraud may toll the statute of limitations, the doctrine of concealed fraud will not toll the statute of limitations where the instrument is recorded as a matter of public record. *Carder v. BASF Corp.* 919 So.2d 258, 262 (Miss.Ct.App.2005) (holding that "[w]hen the information is placed in the public domain, the doctrine of fraudulent concealment ceases to be applicable.") Specifically, "where an alleged fraudulent conveyance of real property is recorded and available to the public, there can be no concealed fraud preventing the running of statute of limitations. *O'Neal Steel, Inc.*, 797 So.2d at 876.

*McWilliams v. McWilliams*, 970 So.2d 200 (Miss.App.,2007) citing *O'Neal Steel, Inc. v. Millette*, 797 So.2d869 (Miss. 2001) and citing *Carder v. BASF Corp.* 919 So.2d 258, 262 (Miss.Ct.App.2005).

These are exactly the circumstances surrounding the deeds from Appellant Laura M. Yarbrough to Ann Morrison Patrick and the unnamed Arlie Andrew Patrick. The deeds clearly indicate first they were signed 6 years before the complaint to set them aside was filed and they were recorded in the appropriate Chancery Clerk's Office 6 years before the complaint was filed. This subjects them to the standards of *McWilliams* and *Mississippi Code Ann Section 15-1-49* which bars the action in totum. As such, the standards as asserted by Appellant are moot.

The undue influence as asserted by Appellant does not hold truth either as there was not any evidence proffered to show Appellant was under the influence of anyone in 2003. This Court stated that the burden of establishing the existence of fiduciary relationship would be on the person claiming the abuse *Mullins v. Ratcliff*, 515 So.2d 1183, 1192 (Miss. 1987). This is the first burden that Appellant would have to meet and there exists no proof of a fiduciary relationship. This relationship must be proven first before there is even a review of undue

influence.

The testimony shows a strong willed mother who in 2002 and 2003 was only receiving help from her daughter that was normal for a mother / daughter relationship. It was in 2004 that Appellant had a stroke and had to receive help from Appellee. This was after the transfer of the property ( Tr 62 ). The burden upon Appellant was to show a confidential or fiduciary relationship prior to the transfer and no one testified on behalf of the Appellant that there existed a relationship at the time of transfer. Appellant argues repeatedly in her brief that a relationship existed due to her accepting help from Appellee; however, this help was in 2004, two years after the transfer of certificate of deposits per its records and a year after the transfer of the property. The help provided was after the transfer so no relationship existed that would have to first be proffered before there can be a shifting. The burden only shifts to the recipient to prove undue influence when a confidential relationship has been established by the donor. *In RE Estate of Summerlin*, 989 So. 2d 466, 478 (Miss. Ct.App.2008).

The Appellant Court has continually relies upon the Lower Court to examine the witnesses and evidence produced at trial. *LeBlanc v. Andrews*, 931 So.2d 683 (Miss.App.2006). There was only testimonial evidence of any type of relationship at the time of the transfer, this being the testimony of Appellee that she was given the property by her mother and that her mother was not infirmed until 2004, after the transfer. Appellant specifically stated that at the time the property was transferred, she was taking care of her own business, driving herself, took care of herself, cooked her own food, and went to the doctor on her own. ( Tr. 32 ).

As stated previously, though the complaint asserts undue influence, the testimony of Appellant throughout the trial was that she did not sign any transfer documents to certificates of

deposit, quit claim deeds, and even her own will that she was claiming needed to be returned.

Appellant stated that documents were signed by Appellee, but offered no proof ( Tr. 33-37 ).

This Court stated that the standard for evaluation of forgeries is as follows:

When a party challenges the validity of a properly acknowledged deed, that party must overcome several presumptions favoring the legitimacy of the document. The *first presumption* provides that where a deed is properly acknowledged, the instrument is presumed to be authentic because the certificate of acknowledgment imports verity and presumptively states the truth. This presumption can be overcome only by clear and convincing evidence. *Jones v. Minton*, 244 Miss. 354, 358, 141 So.2d 564, 565 (1962). The *second presumption* holds that where a grantor's signature is placed on an instrument by the hand of another, the grantor presumptively adopts this signature as his own absent clear and convincing evidence to the contrary. *Jones*, 244 Miss. at 358, 141 So.2d at 566.

*Thompson v. Shell Western E & P Inc.* 607 So.2d 37 (Miss.1992) citing *Jones v. Minton*, 244 Miss. 354, 358, 141 So.2d 564, 565 (1962)

In this matter, Appellant has produced no evidence whatsoever as to the existence of a forgery much less any evidence that is clear and convincing.

## **II. WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW FOR NOT HAVING FOLLOWED THE GUIDELINE MANDATED BY THE COURT REGARDING ELEMENTS FOR GIFT INTER VIVOS**

Appellant has asserted the Lower Court has failed to examine the elements of an inter vivos gift; however, all elements of the gifts executed by Appellant have been either met or there was no proof that she had any control. As stated in *Estate of Ladner*, the donor was competent at the time she made the gift, that the donation was voluntary and had donative intent, that the gift was complete, that delivery was made and was irrevocable. *In re Estate of Ladner*, 909 So.2d 1051 (Miss.2004).

Appellant does not argue that the transfer of the real property was subject to this standard, as the deeds in question were made to Appellee and Arlie Andrew Patrick and upon recordation

they were irrevocable. It appears from the brief that Appellant is arguing that the certificate of deposits in question are only subject to the examination of the inter vivos gift standard. The problem with this issue, is that there was never any proof offered by Appellant or as far as that goes when the certificates were listed only in Appellee's name. Once they were listed in Appellee's name only, then this transfer was complete and irrevocable. As stated, the complaint may argue the setting the aside of a transfer based upon undue influence, but the testimony of Appellant is that they were forged which is subject to a third evaluation not subject to the undue influence standard or the inter vivos gift standard.

More importantly, Appellant fails to recognize that the legislature has addressed this concern of delivery and ownership. *Mississippi Code Sec. 81-5-63* specifically states that once Appellee was placed upon the account then she had just as much right of ownership as Appellant. As such, then the only way to challenge the placing of Appellee on these certificate of deposits would be proof upon clear and convincing evidence of the existence of a confidential relationship between the donor and donee at the time Appellee received the transfer. *Foster v. Ross*, 804 So.2d 1018 (Miss. 2002). This issue has already been addressed in the previous argument of Appellee as the testimony showed no such relationship at the time of transfer.

The presumption of intent at the time of transfer may only be defeated by Appellant if she proves forgery, fraud, duress or an unrebutted presumption of undue influence at the time of the actual transfer. *In re Last Will and Testament and Estate of Dun v. Reilly*, 784 So.2d 935 (Miss.2001). The only testimony proffered at the trial and proven was that Appellant was willing and competent at the time of the transfer and was handling her own affairs. No other evidence to the contrary was submitted.

## CONCLUSION

Despite the accusations of Appellant of undue influence or wrongfully applied standards, she still fails to provide any evidence or contrary testimony at the trial of this matter. Appellant had her opportunity to prove this at trial; however, during her entire testimony she repeatedly alleged forgery, accusations that were never proven or supported. Appellant had her opportunity to prove her vulnerability in 2002 and 2003 and instead only proved that perhaps her real vulnerability may be at the time of the execution of the complaint as her memory was unclear that she even signed the complaint that commenced this litigation.

Appellee, Ann Morrison Patrick, to the contrary presented evidence of transfer and her testimony combined with the sometimes confusing testimony of Appellant specifically points to the fact that in 2002 and 2003 Laura M. Yarbrough was competent to make decisions and she wanted to transfer the property in question. As such, Appellee Ann Morrison Patrick requests that the Lower Court's ruling be affirmed.

Respectfully submitted:

~~Ann Morrison Patrick~~

By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

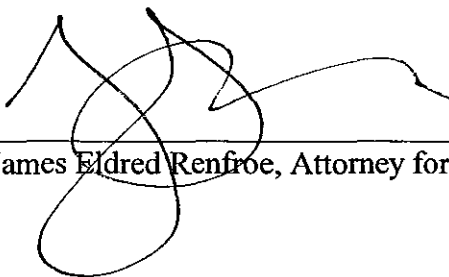
I, James Eldred Renfroe, do hereby certify that I have this day mailed by U.S. Mail, first class postage prepaid, a true and correct copy of the foregoing to the following:

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This the 11 day of October 2010.



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James Eldred Renfroe, Attorney for Appellee