

IN THE SUPREME COURT OF MISSISSIPPI

No. 2010-CA-01408

THOMAS WILLIAM AND DONALD WILLIAMS DEFENDANTS/APPELLANTS

V.

**CLAIBORNE COUNTY SCHOOL DISTRICT,
GERONIMO HARDWOOD TIMBER, LLC a/k/a
GOODHOPE TIMBER, INC and ANDERSON-
TULLY COMPANY**

PLAINTIFFS/APPELLEES

**BRIEF OF APPELLEE/CROSS APPELLANT,
CLAIBORNE COUNTY SCHOOL DISTRICT**

**EVERETT T. SANDERS MSB [REDACTED]
126 COMMERCE STREET, SUITE 103
POST OFFICE BOX 565
NATCHEZ, MISSISSIPPI 39121
TELEPHONE: (601) 445-5570
FACSIMILE: (601) 445-0777
ATTORNEYS FOR PLAINTIFF/APPELLEE/
CROSS-APPELLANT, CLAIBORNE
COUNTY SCHOOL DISTRICT**

CERTIFICATE OF INTERESTED PERSONS

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

1. Tommy Williams and Donald Williams, Appellants
2. Claiborne County School District, Appellee/Plaintiff/Cross-Appellant
Geronimo Timber Company a/k/a Good Hope Timber, Inc. and
Anderson-Tully Company, Appellees
3. Honorable Vincent Davis
Claiborne County Chancery Judge
P.O. Box 1144
Natchez, MS 39121
4. Wren C. Way, Esquire
Way, Field and Dobron
1001 Locust Street
Vicksburg, MS 39183
Attorneys for Appellants
5. Robert C. Latham, Esquire
Truly, Smith and Latham, PLLC
P. O. Box 1307
Natchez, MS 39121
Attorneys for Appellees Geronimo Timber Company a/k/a Good
Hope Timber, Inc. and Anderson-Tully Company, Appellees
6. Everett T. Sanders
Sanders Law Firm
P. O. Box 565
Natchez, MS 39121

Respectfully submitted,

BY: 

EVERETT T. SANDERS, Attorney for
Appellee/Cross-Appellant Claiborne
County School District

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iii
STATEMENT OF ISSUES.....	1
STATEMENT OF CASE.....	1
SUMMARY OF ARGUMENT.....	4
ARGUMENT.....	6
CONCLUSION.....	12
CERTIFICATE OF SERVICE.....	13

TABLE OF AUTHORITIES

Cases	Pages
<i>Ann May Enterprises, Inc v. Caples</i> , 724 So2d 1127 (Miss. App 1998).....	9
<i>Bailey v. Estate of Kemp</i> , <u>955 So.2d 777</u> , 781 (Miss. 2007).....	6
<i>In re Estate of Holmes</i> , <u>961 So.2d 674</u> , 679 (Miss. 2007).....	6
<i>Lynn v. Soterra Inc.</i> , 802 So2d 162 (Miss.App.2001)	
<i>Nichols v. Funderburk</i> , <u>883 So.2d 554</u> , 556 (Miss. 2004).....	6

Statutes

Miss. Code of 1972, Annotated, Section 65-7-4	1,7
Miss. Code of 1972, Annotated, Section 29-3-1.....	10
Miss. Code of 1972, Annotated, Section 65-7-121.....	9

STATEMENT OF ISSUES

- A. WHETHER THE TRIAL COURT ERRED IN RULING THAT ROSS ROAD IS A PUBLIC ROAD AND THAT CLAIBORNE COUNTY DID NOT ABANDON IT AS A PUBLIC ROAD**
- B. WHETHER THE TRIAL COURT ERRED IN FAILING TO AWARD APPELLEE/CROSS-APPELLANT DAMAGES AGAINST APPELLANTS**

STATEMENT OF CASE

The Claiborne County School District along with Geronimo Hardwood Timber, LLC a/k/a Good Hope Timber, Inc. and Anderson-Tully initiated an action against Thomas Williams and later Don Williams (Williams) seeking injunctive relief to prevent them from blocking access to a public road, Ross Road, and seeking damages against them for denying them and the public such access. The Williams filed Answers to Appellees/Plaintiffs various amended pleadings. The case was tried in the Chancery Court of Claiborne County, Mississippi on June 23, 2010.

Dirk Chrestman, an employee with Williford, Gearheart and Knight Engineers, testified that during 1999 and 2000 he was involved in the development of the Claiborne County Road System as required by the Legislature. (RE 28). Chrestman, also, testified that the process for developing the County Road Map entailed the use of a 1995 base digital map provided by the Mississippi Department of Transportation which contained existing county roads as well as information provided by the individual Supervisors as to roads in their respective districts. (RE 17) Chrestman further testified that he prepared the description of Ross Road used in the Road Registry based on the then current existing Highway Department map at the time. (RE 18)

On June 27, 2000, pursuant to Section 65-7-4 of the Miss. Code of 1972, Ann., the

Claiborne County Board of Supervisors adopted a County Map and Registry reflecting the county roads. (RE 13) This Registry included Ross Road which had the following description:

Ross Road is located in Northeast corner of Claiborne County in Township 13 North, Range 4 East and 5 East and being more particularly described as follows: Beginning at the approximate Northeast corner of Section 26, T 13 N, R 4E and runs in a Southeast direction through Section 27, Section 26, Section 7, and section 18 to a point of terminus in the Northwest quarter of said Section 18.

(RE 11)

Neither of the Williams brothers, nor anyone else showed up at the public hearing to register any protest with respect to Ross Road being continued as a county road. (RE 53,61) Don Williams testified that he was not aware of any publication of notice with respect to the June 27, 2000 hearing (RE 51) He further testified that he did not take any action to correct the County=s Road Registry with respect to Ross Road. (RE 53) Thomas Williams testified that he was not familiar with County=s Road Registry until this lawsuit was filed. (RE 61)

Sheila Barnes, Sixteen Section Coordinator for the Claiborne County School District, testified that Section 7, Township 13, Range 5 East is Sixteen Section land, which the Claiborne County School District manages for the benefit of the School District, is situated on Ross Road.(RE 34,35) It is located down the road behind the gates which the Williams maintain across Ross Road. The School District has been unable to generate revenue by leasing this parcel of property because there is no access to the property. (RE 37) The last time the property was leased in 1996 to the Off Road Hunting Club. The Club surrendered the lease because it could not get access to the property. (RE 37) This property is classified as hunting and fishing land for lease purposes. (RE 35) The School District has a minimum fee of \$25 per acre with respect to hunting and fishing leases. (RE 38) This parcel of property contains approximately 569 acres. (RE 37)

The School District lost over \$124,000 in revenue in the last fifteen and a half year due to being unable to lease the property for hunting and fishing purposes. (RE 39) The school district, also, has not been able to harvest the timber on this property. (RE 40)

Alonzo Jones, Claiborne County Road Manager, testified that based the information that he had acquired from his predecessor Ross Road had been maintained by the County past the Williams house prior to the gate being placed across the road. (RE 31,32)

Don Williams testified that gate 1 or the gate near his house was placed across the road in the mid 70's. (RE 97) He said the gate was put up because they were having trouble with people thinking that it was a public road. (RE 40) He also testified that no one is allowed through the gates, but he had allowed the school district representatives and timber management representatives to pass through the gates. (RE 75,76) Don Williams testified that he was not aware of any publication notice in connection with the preparation of the County Road System. He also stated that after looking at the County Map he did not take any actions to correct the Map with respect to Ross Road. (RE 55) Don Williams indicated that he had hunted and allowed others to hunt on the Claiborne County School District's Sixteen Section land as recent a last year, but claims that the game warden gave him permission to hunt. (RE 56,57)

Thomas Williams, brother of Don Williams, testified that his father had put the gate up to keep people out because they were going in there head lighting and killing his father's calves. (RE 60) He also testified that he was unaware that the School District could not get access to the property that it wanted to rent. He stated that they could have gone across other someone else's property. (RE 62) He further testified that he offered the School District \$ 5.00 per acre to lease the Sixteen Section property. (RE 63)

After hearing the testimony, the Court entered a Judgment on July 30, 2010 finding that the portion of Ross Road which passes through the Williams property is a public road owned by Claiborne County and required the Williams to remove the exiting gates and barriers which inhibit Appellees and the public=s use of Ross Road and permanently enjoined the Williams and their successors-in-title from erecting any other gates or barriers which would inhibit the use the said Ross Road by Appellees or the general public.(RE 8) The Court did not award any damages against the Williams for depriving the School District of the revenue which it was entitled. It is from the forgoing ruling of the Chancery Court of Claiborne County that the Claiborne County School District prosecutes this cross appeal.

SUMMARY OF ARGUMENT

- A. The Chancery Court was correct in ruling, based on the evidence, that Ross Road is a public road. There was a Legislative requirement, pursuant to Section 65-7-4 of the Mississippi Code of 1972, Annotated, that all counties prepare and adopt an official map designating and delineating all public roads on the County Road System and a County Road Systems Register which contains the number and name of each public road on the system and a general reference to the terminal points and course of each road. On June 27, 2000 the Claiborne County Board of Supervisors complied with Section 65-7-4 and, without objection from Appellants, included Ross Road on the County Road System's Map and Registry. Both the Map and Registry reflect that the portion of Ross Road on which the Appellants have placed gates is a public road.

The Chancery Court was correct in ruling that Appellants failed in their abandonment

claim because they failed to provide evidence that the portion of Ross Road located behind the gates that they maintained was abandoned by Claiborne County.

Appellants did not prove that Claiborne County had taken any formal steps to abandon any portion of Ross Road or that such portion had been in continuous disuse by the public for a period of ten years.

- B. The Chancery Court erred in failing to award the Claiborne County School District damages against appellants for intentionally denying it access to the Sixteen Section property for lease purposes and denying it the revenue that the Legislature intended for the School District to receive. This is particularly true in light of the fact that the evidence is uncontradicted that Appellants would not permit lessees access to the property. There is statutory authorization for damages to be assessed in a situation such as the one in this case.

A. ROSS ROAD IS A PUBLIC ROAD AND CLAIBORNE COUNTY DID NOT ABANDON IT AS A PUBLIC ROAD

The law is well settled regarding the circumstances which give rise to this Court disturbance of the factual findings of Chancery Court. This Court's review of the decision of a chancellor is limited. *Nichols v. Funderburk*, 883 So.2d 554, 556 (Miss. 2004). We will reverse only when the chancellor's determinations were manifestly wrong, clearly erroneous, or lacked the support of substantial, credible evidence. *In re Estate of Holmes*, 961 So.2d 674, 679 (Miss. 2007). However, we review all questions of law de novo. *Bailey v. Estate of Kemp*, 955 So.2d 777, 781 (Miss. 2007).

In case *sub judice*, the Chancellor made the following findings with respect to posture of Ross Road:

“The County Road Registry, introduced as Exhibit 1 during the hearing, clearly depicts Ross Road as a public road, from its beginning off of Old Port Gibson Road through the property of the defendants. The description of the road in this document describes it particularly as ‘Beginning at the approximate Northeast corner of Section 26, T13N, R4E and runs in a Southeast direction through Section 27, Section 26, Section 7, and Section 18 to its point of terminus in the Northwest quarter of said Section 18.’

Dirk Crestman, Civil Engineer with Williford, Gearhart and Knight offered testimony that he participated sometime during 1999 and/or 2000 in the preparation of the County Map for Claiborne County. Through this witness, Exhibit 5 was entered into evidence. This

exhibit shows the section of land or road which is the subject of this litigation to in fact be Ross Road and to be a public road. Alonzo Jones, Road Manager for Claiborne County, Mississippi since October 15, 2005, testified that according to the aforementioned Road Registry, the road is a public road. Mr. Jones further testified that the county maintains said road up to the gate. His testimony was that they can go no further because of the gate.

On June 1, 2000, the Claiborne County Board of Supervisors, in the establishment of a County Road System Registry, established the portion of land which is the subject of this litigation to be a public road. On June 27, 2000, a hearing was held in regard to the various designations by the County and no one objected to Ross Road (as described above) being designated a public road.

That the evidence presented in this matter clearly establishes and the court hereby finds that the portion of land beginning at the approximate Northeast corner of Section 26, T13N, R4E and runs in a Southeast direction through section 27, Section 26, Section 7, and Section 18 to its point of terminus in the Northwest quarter of said Section 18 is a public road and is not the private property of the defendants.” (RE 8)

It is rather ostensible that the Court’s above findings are supported by the evidence. In July, 1998, the Mississippi Legislature by way of Section 65-7-4 of the Miss. Code of 1972 Ann. required that all counties prepare and adopt an official map designating and delineating all public roads on the County Road System and a County Road Systems Register which contains the number and name of each public road on the

system and a general reference to the terminal points and course of each road. On June 27, 2000 the Claiborne County Board of Supervisors complied with Section 65-7-4 and, without objection from Appellants, included Ross Road on the County Road System's Map and Registry. Both the Map and Registry reflect that the portion of Ross Road on which the Appellants have placed gates is a public road. (RE 11.18)

Appellants seek to justify their failure to act by indicating an absence of knowledge that the road registration process was occurring. Lack of knowledge of the law is no defense. However, both of the Appellants admit that once they became aware that the County had adopted the Map and the Registry they did nothing to initiate a process with the Claiborne County Board of Supervisors to correct what they claim to be incorrect. The failure on the part of the Appellants to appear at the published hearing on June 27, 2000 operates to bar them from challenging the County Registry and Map for the first time in this proceeding.

Appellee, Claiborne County District, submits that Appellants have woefully failed to satisfy their evidentiary burden to support a claim of abandonment. In their Counterclaim, Appellants allege *inter alia*, the following:

“Further pleading Claimants would show that, even if it can be established as a public road at some point in time, that part of Ross Road lying easterly of the gate complained of has been abandoned by the Claiborne County Board of Supervisors for over forty years and has had no public activity thereon for said period of time. (RE 2)

The evidence is uncontradicted that Claiborne County Board of Supervisors did not

engage in a formal proceeding in accordance with Section 65-7-121 of the Miss. Code of 1972, Ann. to abandon the portion of the road which is the subject of this litigation. In fact, Appellants make no such claim. It is, also, equally clear that there have been persons who have from time to time used the stretch of road which is in dispute to access property located behind the property owned by Appellants. The record is replete with testimony that the Forester, Ms. Barnes, the game warden, and representatives of timber companies and others have used the portion of Ross Road which is the subject of this litigation. This access is something that has apparently continued over the years. There is no minimum number of individuals required to use the road in order to defeat a claim of abandonment. *Ann May Enterprises, Inc v. Caples*, 724 So2d 1127,1130,1131 (Miss. App 1998) Therefore, Appellee suggests that Appellants have not shouldered their burden in demonstrating abandonment.

B. THE TRIAL COURT ERRED IN FAILING TO AWARD APPELLEE/CROSS-APPELLANT DAMAGES AGAINST APPELLANTS

Applllee/Cross-Appellant, Claiborne County School District, submits that the Chancellor committed error when he failed to award it damages based on facts and the law applicable in this case. The facts are clear and undisputed that the School District manages Sixteen Section land located in Section 7, Township 13, Range 5 East. (RE) This land is located behind the gate which has been maintained by Appellants. It is also undisputed that the School District has been denied access to this property for lease purposes for over 15 years.

Pursuant to statute, the Claiborne Board of Education is entrusted with the management of Sixteenth Section properties for the benefit of the School District. Section ' 29-3-1 of the Miss. Code of 1972, Ann. provides, inter alia:

(1) Sixteenth section school lands, or lands granted in lieu thereof, constitute property held in trust for the benefit of the public schools and must be treated as such. The board of education under the general supervision of the state land commissioner, shall have control and jurisdiction of said school trust lands and of all funds arising from any disposition thereof heretofore or hereafter made. It shall be the duty of the board of education to manage the school trust lands and all funds arising therefrom as trust property. Accordingly, **the board shall assure that adequate compensation is received for all uses of the trust lands, except for uses by the public schools.** (Emphasis added)

...

During the period of time that Appellants prevented the School District from leasing the property, they we using the property for hunting purposes. Appellant Don Williams acknowledge that he hunted on the property and permitted other to hunt on it as well. (RE 56, 57) This was done without the permission of or compensation to the Claiborne School District. Appellant Williams

said that the game warden had given him permission to hunt. The game warden was without authority to give permission. In fact, the School District could not lawfully give Appellants or anyone else permission to hunt on Sixteen Section land without compensation.

In the case of *Lynn v. Soterra Inc.*, 802 So2d 162 (Miss.App.2001) this Court recognized that damages are appropriate where one party has deprived the other party of use of his property by placing an obstruction across a public road. Although Soterra involved a boundary dispute, the question of damages arose in the context of Lynn erected a barrier to prevent Soterra from getting access to its' property. Soterra owned a clay pit out of which he sold clay by the truckloads. When Lynn blocked the road, Soterra was unable to sell the clay. The Court determined Soterra was entitled to recover profits he had lost during the time period that road was blocked. Damages were awarded to Soterra in the amount of \$12,000 which reflected his lost profit.


In the case *sub judice*, the School District suffered damages in the amount of \$124,326.50 due to its inability to lease the property to which Appellants denied it access for lease purposes. The period of time extends from 1995 to the present. It takes into consideration the minimum lease value which the School District assigned to hunting and fishing leases at various times during the subject period of time.

The Claiborne County School District submits that it is clear error on the part of the Court below to not award damages in this situation. The School District requests that this Court reverse the trial court on the issue of damages and direct that it entered an order awarding the appropriate damages or that this Court assess the damages as a matter of law based on the evidence in the record.

CONCLUSION

For the foregoing reasons, the Claiborne County School District submits that the trial court should be upheld on the issues regarding the public nature of Ross Road and the failure of Appellants to prove any abandonment on the part of Claiborne County. At the same time, the Claiborne School District urges this Court to reverse the trial court on the issue of damages and remand the case for the trial court to enter an order awarding damages, or in the alternative award the School District as a matter of law the \$124,326.50 which is uncontradicted in the record.

Respectfully submitted,

BY: 

EVERETT T. SANDERS MSB [REDACTED]
SANDERS LAW FIRM
POST OFFICE BOX 565
NATCHEZ, MS. 39121
TELEPHONE: (601) 445-5570
FACSIMILE: (601) 445-0777
Attorneys for Plaintiff/Appelle/Cross-
Appellant, Claiborne County School District

CERTIFICATE OF SERVICE

I, Everett T. Sanders, do hereby certify that I have this day served via United State mail, postage prepaid, a true and correct copy of the foregoing Brief of Appellee/Cross-Appellant on:

Mr. Wren C. Way
Way, Field and Bodron
1001 Locust Street
Vicksburg, MS
Attorney of Record for Appellants,
Thomas Williams and Donald Williams

Mr. Robert C. Latham
Truly, Smith and Latham, PLLC
P.O. Box 1307
Natchez, MS 39121
Attorneys for Plaintiffs/Appellees, Geronimo
Hardwood Timber, LLC and Anderson-Tully Company

Hon. Vincent Davis
Claiborne County Chancery Judge
P.O Box 1144
Natchez, MS 39121

This 2nd day of May, 2011.



EVERETT T. SANDERS