

**BEFORE THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**NO. 2010-CA-01776**

**CATHY M. GRANT**

**APPELLANT**

**VS.**

**WILLIE DONELSON**

**APPELLEE**

**On Appeal from the Chancery Court of the  
First Judicial District of Hinds County, Mississippi**

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**BRIEF OF APPELLEE**

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**ORAL ARGUMENT REQUESTED**

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### **STATEMENT OF ISSUES**

- I. THE TRIAL COURT'S RULINGS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.
- II. THE TRIAL COURT APPLIED THE CORRECT LEGAL STANDARDS AND FOLLOWED EXISTING LAW; FURTHER, THE TRIAL COURT CONSIDERED ALL MATERIAL FACTS AND WAS NOT MANIFESTLY WRONG.

## STATEMENT OF THE CASE

### NATURE OF THE CASE

This appeal results from a case in the trial court wherein Willie Donelson filed a complaint against Cathy M. Grant alleging that he agreed to provide funds totaling \$40,600.00 to purchase a residence in which Ms. Grant was then residing which was to be titled in Mr. Donelson's name. Through the actions of Ms. Grant, the home was titled in her name. The trial court initially imposed a lien in favor of Mr. Donelson in the amount of \$40,600.00 on the subject property and later amended its ruling to require Ms. Grant to reconvey the property to Mr. Donelson.

### COURSE OF PROCEEDINGS AND DISPOSITION BELOW

Willie Donelson filed his Complaint against Cathy M. Grant on March 12, 2008. On April 21, 2008, Cathy M. Grant filed her Answer to Complaint. This matter was heard before the trial court on August 8, 2010.

The trial court entered its Order and Opinion in favor of Mr. Donelson on September 28, 2010. Ms. Grant moved to reconsider, to alter or amend judgment and to stay the order. Said motion was heard before the trial court and granted a stay of the judgment while post-trial motions were considered. *R. at 73.* On January 5, 2011, the trial court entered an amended order and opinion in favor of Mr. Donelson.

On March 1, 2011, the lower Court entered its Second Amended Order and Opinion of the Court. The trial court found that the lien in the amount of \$40,600.00 was unenforceable due to Appellant claiming the subject property as her homestead. Accordingly, the trial court granted Mr. Donelson ownership of the subject property to be effected by transfer of title.

### STATEMENT OF THE FACTS

On or about October 16, 2007, Willie Donelson entered into an oral agreement with Cathy M. Grant whereby Mr. Donelson agreed to provide funds totaling \$40,600.00 to purchase a residence in which she was then residing. As part of the agreement, the deed to the residence would be put into Mr. Donelson's name and Ms. Grant would make monthly rental payments of \$425.00. However, at the closing of the property, Mr. Donelson was not present and Ms. Grant had the warranty deed put into her name instead of Mr. Donelson's. Subsequently, Mr. Donelson learned that the property had not been put into his name but instead was in Ms. Grant's name. Mr. Donelson made several requests to see the warranty deed and to then have the title transferred to his name. Mr. Donelson also provided additional funds to pay an attorney to transfer the deed into his name. Ms. Grant ignored those requests, never made any monthly rental payments and the deed remains in Ms. Grant's name.

Accordingly, on March 12, 2008, Mr. Donelson filed his Complaint against Ms. Grant, the object of which was to award him ownership of the subject real property with a street address of 4072 Warner Avenue, Jackson, Mississippi and for an award of unpaid rents.

On January 5, 2011, the trial court issued an Amended Opinion and Order in favor of Mr. Donelson. The trial court imposed a lien in the amount of \$40,600.00 on the subject property in favor of Mr. Donelson.

On March 1, 2011, the trial court entered its Second Amended Order and Opinion. The trial court found, based on Miss. Code Ann. Section 85-3-21 (1972, as amended), that the lien it granted in the amount of \$40,600.00 was unenforceable due to Ms. Grant having claimed the subject property as her homestead. Accordingly, the trial court granted Mr. Donelson ownership of the

subject property to be effected warranty deed from Ms. Grant.

### **SUMMARY OF THE ARGUMENT**

On January 5, 2011, the trial court issued an amended opinion and order in which it found that there were two parts to the oral agreement between Mr. Donelson and Ms. Grant. The first part of the agreement was that Ms. Grant was to utilize the \$40,600.00 to pay the purchase price of the home and that she have the warranty deed placed in Mr. Donelson's name. *R. at 81*. The trial court correctly found that such an agreement is not covered under the Statute of Frauds because it does not deal with the sale of land. *Id.* The Mississippi Statute of Frauds requires that "any contract for the sale of lands, tenements, or hereditaments, or the making of any lease thereof for a longer term than one year," shall be in writing or it is not enforceable. Miss. Code Ann. § 15-3-1(c) (1972, as amended).

The second part of the agreement is covered under Mississippi's Statute of Frauds which was an agreement for Ms. Grant to rent the subject property from Mr. Donelson after the warranty deed was put in his name. *R. at 81*. The trial court found that this agreement constitutes the making of a lease for presumptively longer than one (1) year and this is clearly under the Statute of Frauds. *Id.* The trial court therefore found that the agreement relating to the one (1) year lease to be void. *Id.* Thus, the issue before the trial court was whether a constructive trust was created based upon the \$40,600.00 advanced by Mr. Donelson. *Id.*

From the testimony, the trial court correctly found that Ms. Grant, by an abuse of confidence, against equity and good conscience holds title to the subject property which she ought not hold and enjoy. *Id.* The trial court found that a constructive trust does exist in this matter and granted relief in favor of Mr. Donelson. In the order entered on January 5, 2011, the trial court held that a lien in

the amount of \$40,600.00 was imposed on the subject property owned by Ms. Grant and located at 4072 Warner Drive, Jackson, Mississippi in favor of Mr. Donelson. *R. at 84.*

A constructive trust is one that “arises by operation of law against one, who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong, or by any form of unconscionable means, or who in any way against equity and good conscience, either has obtained or holds the legal right to property when he ought not, in equity and good conscience, to hold and enjoy.” *Saulsberry v. Saulsberry*, 78 So.2d 758 (Miss. 1955).

Ms. Grant acknowledges that Mr. Donelson gave her a sum of money to put towards the acquisition of the subject property. *R. at 83.* Ms. Grant asserted that the sum was approximately \$5,000.00 rather than the \$40,600.00 that Mr. Donelson alleged. *Id.* However, the trial court correctly found that Ms. Grant did not give any credible testimony regarding where she obtained the additional \$35,000.00 and that lack of proof persuaded the trial court that Mr. Donelson did provide funds for purchase of the subject property. *Id.* Mr. Donelson is a businessman who owns numerous properties and could account for where his funds came from. Further, testimony showed that Ms. Grant did not independently possess the ability to purchase the home. *Id.* Ms. Grant needed financial help and she received that help from Mr. Donelson. *Id.*

## **ARGUMENT**

### **SCOPE OF REVIEW**

The Supreme Court will not disturb the findings of a chancellor when supported by substantial credible evidence unless the chancellor abused his or her discretion, was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied. *Sanderson v. Sanderson*, 824 So.2d 623, 625-26 (Miss. 2002). Legal questions are reviewed *de novo*. *Russell v. Performance*



*Toyota, Inc.*, 826 So.2d 719, 721 (Miss. 2002).

**I. THE TRIAL COURT'S RULINGS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.**

The trial court followed the standard set by the Mississippi Supreme Court which held that an action to establish constructive trust of realty, "[t]he intention of parties may be inferred from the facts, conduct of the parties, and the surrounding circumstances." *Adcock v. Merchants & Manufacturers Bank of Ellisville*, 42 So.2d 427, 429 (Miss. 1949) (citations omitted). The trial court found that although the second part of the agreement between Mr. Donelson and Ms. Grant does not deal directly with realty, it is the means by which to establish a constructive trust with which the court was most concerned. *R. at 82*. The trial court followed the above recited standard to infer the facts, the intention of the parties, the conduct of the parties and the surrounding circumstances. Clearly, there is substantial evidence in the record upon which the findings are based.

Mr. Donelson testified that on the day Ms. Grant signed the warranty deed, he was at Ms. Grant's lawyer's office. *R. at 82*. Mr. Donelson testified, however, that Ms. Grant took him back home because he wasn't feeling well. *R. at 83*. The trial court correctly found that Mr. Donelson played a significant role in the signing of the warranty deed or else he would not have otherwise been there. *Id.* Ms. Grant acknowledges that Mr. Donelson gave her a sum of money to put towards the subject property. *Id.* Ms. Grant asserts, however, that the sum was approximately \$5,000.00 rather than the \$40,600.00 alleged by Mr. Donelson. *Id.*

Based on the testimony of the parties, the trial court found that Ms. Grant failed to provide credible testimony regarding where she obtained the additional \$35,000.00 which persuaded the trial court that Mr. Donelson did provide funds to purchase the subject property, the amount of which

depends on whose testimony is superior. *Id.* Accordingly, the trial court was persuaded that Mr. Donelson's testimony preponderates over Ms. Grant's testimony because Mr. Donelson is a business man who owns numerous properties and he has been dealing in real estate for years. *Id.* Testimony also shows that Ms. Grant did not have the financial ability to purchase the home. *Id.* She needed financial help and she received that help from Mr. Donelson. *Id.*

In evaluating Mr. Donelson's credibility, it should be considered that he has had steady, regular income from his rental property and landscaping business and therefore he was able to explain how he acquired the funds for the purchase. On the other hand, Ms. Grant has not had the same regular, steady income and was not employed in October 2007 at the time of the subject transaction. Her explanation of where the money came from is questionable at best. The trial court was correct in finding that the testimony of Mr. Donelson was more credible than that of Ms. Grant. Further, in the record before this Court, Mr. Donelson's evidence should be taken as uncontested because Ms. Grant did not call any witnesses at trial or present any evidence.

**II. THE TRIAL COURT APPLIED THE CORRECT LEGAL STANDARD AND DID FOLLOWED EXISTING LAW; FURTHER, THE TRIAL COURT CONSIDERED ALL MATERIAL FACTS AND WAS NOT MANIFESTLY WRONG.**

The trial court applied the correct legal standard and followed the law when it entered its order in favor of Mr. Donelson. In *Neyland v. Neyland*, 482 So.2d 228 (Miss. 1986), the Mississippi Supreme Court found that parents were entitled to an equitable lien against a house and lot which was constructed with funds advanced by the parents. "The statute of frauds has no application to a constructive trust or equitable lien which arises by operation of law." *Id.* at 230. In reaching this decision, the Supreme Court recited Section 160 of the Restatement of Restitution which states that a constructive trust arises "where a person holding title to property is subject to an

equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it.” *Id.* ***Neyland*** also recites Section 160 of the Restatement of Restitution which states: “where property of one person can by a proceeding in equity be reached by another as security for a claim on the ground that otherwise the former would be unjustly enriched, an equitable lien arises.” *Id.* In this case, Mr. Donelson advanced funds for purchase of the subject residence. Ms. Grant was under a duty to have the home put into Mr. Donelson’s name and did not do so. Ms. Grant has an equitable duty to either convey the property to Mr. Donelson or pay him the value thereof.

In ***Koval v. Koval***, 576 So.2d 134 (Miss. 1991), a son initiated suit against his parents in chancery seeking to enforce an alleged oral contract to convey real property. The Mississippi Supreme Court held that the parents were estopped from denying the oral agreement. *Id.* On the application of equitable estoppel, the Court noted: “it matters not whether the party making the statement intended to deceive the other party at the time the statement was made; rather, the test is whether if it would be substantially unfair to allow a person to deny what he has previously induced another to believe and take action on.” *Id.* at 138. In this case, Ms. Grant agreed that Mr. Donelson’s name would be on the warranty deed in exchange for the funds provided. It would be “substantially unfair” to have not enforced the promise Ms. Grant made to Mr. Donelson because it was in fact the promise that induced Mr. Donelson into advancing the funds.

In this case, the doctrine of equitable estoppel is invoked because Mr. Donelson detrimentally relied on Ms. Grant’s agreement. The Mississippi Supreme Court has addressed when it is appropriate to invoke promissory estoppel as follows: “[a]n estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied

upon and in fact was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetuation of fraud or would result in other injustice.” *Thompson v. First American National Bank*, 19 So.3d 784, 788 (Miss. App. 2009) (quoting *C. E. Frazier Constr. Co. v. Campbell Roofing and Metal Works, Inc.*, 373 So.2d 1036,1038 (Miss. 1979)). It is clear that an injustice would result if Ms. Grant is not estopped from asserting a statute of frauds defense.

Mr. Donelson relied upon Ms. Grant’s promise to put his name on the warranty deed and to make monthly rental payments. In *Thompson*, the Court went on to explain: “[it] is universally conceded that the doctrine of equitable estoppel may be invoked to preclude a party to a contract from asserting the unenforceability of a contract by reason of the fact that it is not in writing as required by the statute of frauds . . . . Where one has acted to his detriment solely in reliance on an oral agreement, an estoppel may be raised to defeat the defense of the statute of frauds.” *Id.* at ¶ 18 (quoting *Sanders v. Dantzler*, 375 So.2d 774, 776 (Miss. 1979)). Mr. Donelson’s action in giving up \$40,600.00 was to his detriment and he relied solely on Ms. Grant’s promise to put the deed in his name and to pay rent.

However, title to the subject property is held in the name of Ms. Grant who filed for homestead exemption on the property. “The significance of that claim first is seen in a statute that permits a citizen ‘to hold exempt from seizure or sale, under execution or attachment, the land and buildings owned and occupied as a residence,’ to a limit of 160 acres and a value of \$75,000.” *McMillan v. Aru*, 773 So.2d 355, 358 (Miss. App. 2000) (quoting Miss. Code Ann. § 85-3-31 (1972, as amended)). Therefore, the subject property is exempt from execution by judgment creditors up to \$75,000.00 in value.

Pursuant to the Amended Order and Opinion of the Court, the trial court found that the

portion of the parties' agreement whereby Mr. Donelson agreed to give Ms. Grant \$40,600.00 in exchange for title to the subject property being placed into Mr. Donelson's name was not covered by the statute of frauds. Since this portion of the agreement is enforceable against Ms. Grant, the trial court used a constructive trust to order title to the subject property be transferred to Mr. Donelson's name which was the essence of the parties' agreement.


### **CONCLUSION**

The trial court did not err in ordering title to the subject property to be transferred to Mr. Donelson. There was an oral agreement between Mr. Donelson and Ms. Grant pursuant to which Mr. Donelson provided \$40,600.00 to Ms. Grant for purchase of the subject property. The trial court correctly found that Mr. Donelson's testimony preponderates over Ms. Grant's testimony. Further, Ms. Grant offered no corroboration that would disprove the credibility of Mr. Donelson's testimony. The trial court considered all the testimony and applied the correct legal standard when it granted Mr. Donelson's title to the subject property by transfer of the warranty deed. This Court should find in favor of Mr. Donelson's and affirm the trial court's decision.

Respectfully submitted,

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BY:   
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**CERTIFICATE OF SERVICE**

I, Paul E. Rogers, hereby certify that on this day I have mailed via U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing to the following:

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**THIS** the 3<sup>rd</sup> day of June, 2011.

  
\_\_\_\_\_  
**PAUL E. ROGERS**