

BEFORE THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO: 2010-CA-01776

CATHY M. GRANT

APPELLANT

V.

WILLIE DONELSON

APPELLEES

**APPEAL FROM DECISION OF THE CHANCERY COURT OF
HINDS COUNTY, MISSISSIPPI**

BRIEF OF APPELLANT

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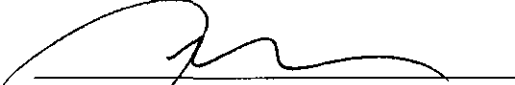
ATTORNEYS FOR APPELLANTS

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.

- | | | |
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| 1. | Cathy Grant | Appellant |
| 2. | James A. Bobo
Akers & Bobo, PLLC | Attorneys for Appellant |
| 3. | Paul Henderson
Attorney at Law | Attorney for Appellant |
| 4. | Willie Donelson | Appellee |
| 5. | Paul E. Rogers
Paul E. Rogers, P.A. | Attorney for Appellee |
| 7. | Chancellor Denise Owens | Chancery Court Judge for
Hinds County, Mississippi |

This the 11th day of May, 2011.



James A. Bobo
One of the Attorneys for Appellant

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STATEMENT OF THE CASE

This appeal involves the claims of Cathy Grant for reconsideration, amendment and altering of the Chancery Court of Hinds County's judgment entered September 28, 2010, and the Second Amended Order and Opinion of the Court entered March 1, 2011, and to stay enforcement of said Judgments while the matter is under consideration and on appeal.

The Appellant humbly and respectfully submits that the Trial Court's rulings are not supported by substantial evidence, that it has applied the wrong legal standards, has not correctly followed the law; has failed to consider material facts and is manifestly wrong.

STATEMENT OF THE FACTS

Grant purchased property which was titled in her name. Grant had resided in the property for a number of years prior to purchasing it. Donselson never resided on or possessed the property. Grant remained in sole possession of the property as her residence and homestead after her purchase. Part of the purchase money came from an unsecured loan between Grant and Donselson.

Donselson subsequently claimed that Grant was a "straw person" and that he was the true and lawful owner of the property.

After a brief trial, the Trial Court incorrectly concluded that there was an agreement between Donelson and Grant that the deed to the property would be placed in Donelson's name. Donelson's testimony is not substantial evidence. There was no proof of this agreement other than Donelson's unsupported and self serving claim. The actual deed to the property and Grant's possession thereof, and her testimony, are substantial evidence that supports the conclusions opposite to those adopted by the Trial Court.

SUMMARY OF THE ISSUES

1. Whether or not the Trial Court's rulings are supported by substantial evidence?

2. Whether the Trial Court applied the wrong legal standards, not correctly followed the law; has failed to consider material facts and was manifestly wrong?

SUMMARY OF ARGUMENT

The Chancellor's decision was not supported by substantial evidence. At most the evidence reflects that Grant had purchased her long time residence and that Donelson had made an unsecured loan to Grant. Donelson's claims of a straw man transaction are barred by the Statute of Frauds. Likewise no constructive trust existed or arose by operation of law or equity.

ARGUMENT

Donelson's claims of a straw man or deed back transaction are not supported by substantial evidence. Donelson's self serving testimony does not arise to a scintilla of evidence. See *Daniel v. Snowdoun Ass'n* 513 So.2d 946, 951 (Miss. 1987).

The Trial Court incorrectly held that the alleged oral agreement put forward by Donelson is not covered by the Statute of Frauds because the transaction "does not deal with the sale of land." Donelson alleged a "deed back" agreement which has been held to clearly fall within the Statute of Frauds. See Miss. Code Ann. §15-3-1. *See e.g., Glinsey v. Newson*, 911 So.2d 661, 664 (Miss. Ct. App. 2005) (claim that property was placed in the name of another and to be deeded back later was barred by Statute of Frauds.) and *Lipe v. Souther*, 80 So.2d 471, 475 (Miss.1955).

The Trial Court also erroneously found that a constructive trust existed. The existence of a constructive trust must be clear and convincing. The proof must establish the facts and circumstances giving rise to the trust with an extraordinary degree of certainty and clarity. *Stovall v. Stovall*, 364, 67 So.2d 391 (Miss. 1953). "These principles are a reflection of the purpose of the Statute of Frauds ... which requires declarations of trust to be in writing, except where the trust arises by implication of law out of a conveyance of land." *Lipe v. Souther*, 80 So.2d 471, 475 (Miss.1955). "An

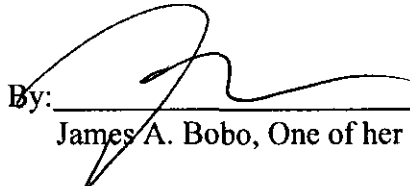
enforceable trust will not arise from the mere breach of an oral promise to hold land in trust. There must be conduct influential in producing the result, and but for which such result would not have occurred amounting, in the view of a court of equity, to fraud in order to save the case from the Statute of Frauds. Id. In the present case there is absolutely no evidence that at the time the property was deeded to Grant that such action was undertaken because Donelson was influenced to allow it to occur. In fact Donelson claims the opposite. Donelson claims that the deed was to be placed in his name from the beginning. There being no trust, confidence or influence, there could be no resulting constructive trust.

CONCLUSION

The decisions of the Trial Court should be reversed and a judgment rendered in favor of Grant.

Respectfully submitted,

Cathy M. Grant

By: 
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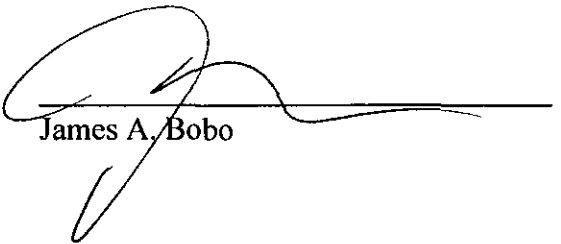
CERTIFICATE OF SERVICE

I, James A. Bobo, attorney for the Appellant, hereby certify that I have this day served, by US Mail, postage fully prepaid, a true and correct copy of the foregoing document to:

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Honorable Denise Owens
Chancery Court of Hinds County, Mississippi
Post Office Box 686
Jackson, Mississippi 39205-0686

This the 11th day of May, 2011.


James A. Bobo