

IN THE COURT OF APPEALS OF MISSISSIPPI

NO. 2010-CA-01912

LARRY TAYLOR

APPELLANT

V.

ALFORD BELL AND SHELIA BELL

APPELLEES

BRIEF OF APPELLEES

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

**RANDOLPH WALKER, ESQ.
WALKER LAW OFFICE, PLLC
POST OFFICE BOX 1492
408 EAST WALDRON STREET
CORINTH, MS 38835-1492
TELEPHONE: (662) 665-9536
TELECOPIER: (662) 396-4329
E-MAIL: walker408@comcast.net**

IN THE COURT OF APPEALS OF MISSISSIPPI

NO. 2010-CA-01912

LARRY TAYLOR

APPELLANT

V.

ALFORD BELL AND SHELIA BELL

APPELLEES

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.

Larry Taylor

Appellant

Alford Bell and Sheila Bell

Appellees

Hon. Kenneth Burns

Chancellor (Trial judge)

Fox Law Firm

(John P. Fox, Esq., Elizabeth Fox Ausbern, Esq. and

Tina M. Scott, Esq.)

Attorneys for Appellant

Walker Law Office, PLLC

(Randolph Walker, Esq. and Randolph Walker, Jr., Esq.)

Attorneys for Appellees

Attorney of Record for Alford
Bell and Sheila Bell, Appellees

TABLE OF CONTENTS

	PAGE
CERTIFICATE OF INTERESTED PERSONS	I
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF ISSUES	1
STATEMENT OF THE CASE	2
SUMMARY OF THE ARGUMENT	4
ARGUMENT	5
I. The Bells established adverse possession by clear and convincing evidence	5
II. The Chancellor did not commit error in failing to specifically find the facts as to adverse possession	6
III. The trial court did not commit error in establishing a boundary line between the parties	6
CONCLUSION	8
CERTIFICATE OF SERVICE	9

TABLE OF AUTHORITIES

CASES	PAGE
<i>Blakenship v. Payton</i> , 605 So.2d 817, 819 (Miss. 1992)	4
<i>Friar v. Templet</i> , 724 So.2d 517, 519 (Miss. App. 1998)	4
<i>Illinois Cent. R.R. v. Samson</i> , 799 So.2d 20 (Miss. 2001)	6
<i>Nichols v. Funderburk</i> , 883 So.2d 554, 556 (Miss. 2004)	5, 6
<i>Stewart v. Graber</i> , 754 So.2d 1281, 1284 (Miss. App. 1999)	4
<i>Thornhill v. Caroline Hunt Trust</i> , 594 So.2d 1150, 1153 (Miss. 1992)	6
<i>Turner v. Turner</i> , 744 So.2d 332 (Miss. App. 1999)	4, 8
COURT RULES	
Mississippi Rule of Civil Procedure 52	4, 6

STATEMENT OF THE ISSUES

- I. Did the Bells establish adverse possession by clear and convincing evidence?
- II. Did the trial court commit error in failing to make findings of facts as to the elements of adverse possession?
- III. Did the trial court commit error in establishing a boundary line between the parties?

STATEMENT OF THE CASE

I. Nature of case, course of proceedings and disposition in trial court

This is an appeal by Larry Taylor, Appellant (“Taylor”), from an October 19, 2010 judgment of the Chancery Court of the First Judicial District of Chickasaw County, Mississippi. (RE 22). On December 4, 2009, Alford Bell and Sheila Bell, Appellees (“the Bells”) filed a Complaint in Chancery Court to Confirm Title and to Remove a Cloud on Title. (RE 4-12). The Complaint alleged, *inter alia*, that the Bells had acquired, by adverse possession, title to a portion of the lot of Taylor that adjoins their property. (RE 5).

Taylor denied that the Bells had acquired any title or interest in his property. (RE 14-18). This cause came on for trial on September 9, 2010, in the Chancery Court for the First Judicial District of Chickasaw County, before the Honorable Kenneth M. Burns, Chancellor. After hearing the evidence and arguments of counsel for the respective parties, the Court determined that the Bells had met their burden of proof, and ordered that “a boundary line be established at the point halfway between the center line of the ditch to the fence post that’s set on the north end of the property and let it run due south.” (RE 38-39). A judgment consistent with the ruling of the Court was entered on October 19, 2010. (RE 22).

On November 17, 2010, Taylor filed his notice of appeal. (RE 23).

ii. Statement of Facts

The Bells are the owners of real property in the First Judicial of Chickasaw County, Mississippi, located at 237 Pittsboro Street, Houston, MS. (Transcript (“T”), p. 4). The Bells have lived on this property as their homestead since 1974 (T. 5).

Adjoining the property of the Bells is land owned by Taylor. (T. 4). In 1984, the Bells

had a survey performed on the real property that is the subject of this action. This survey revealed an encroachment of their dwelling on the adjoining real property claimed by Taylor. However, at the time the Bells purchased the property, they were led to believe that the boundary line for their property was the ditch on the west side. (T. 6).

Beginning in 1974, the Bells maintained the property to the ditch as their own. Neither the Taylors, nor anyone on their behalf made any claim to this property. (T. 12). The Bells never asked Mr. Taylor or his predecessors in title for permission to use the property. (T. 13). The Bells have maintained the disputed property by having it landscaped and keeping it mowed. (T. 14).

In April 2010, Taylor constructed a fence to deny the Bells access to the subject property. (T. 13-14).

At the conclusion of the trial of this action, the Chancellor held that “a boundary line be established at the point halfway between the center line of the ditch to the fence post that’s set on the north end of the property and let it run due south.” (RE 38-39). Taylor appealed the decision of the Chancellor.¹

¹The Bells filed a Notice of Cross Appeal in this cause. (RE 25). The Bells have abandoned this cross appeal and will not file a brief in connection with the cross appeal.

SUMMARY OF THE ARGUMENT

In Mississippi, the courts have defined possession as effective control over specific property evidenced by things that are perceptible to the senses. *Blankenship v. Payton*, 605 So.2d 817, 819 (Miss. 1992). The factual question before the court is whether “acts by the adverse possessor are sufficient to ‘fly his flag’ over land and to put the record title on notice that the land is being held under an adverse claim of ownership.” *Friar v. Templet*, 724 So.2d 517, 519 (Miss. App. 1998). The burden of proof to establish adverse possession is clear and convincing evidence. *Stringer v. Robinson*, 760 So.2d 6, 9 (Miss. App. 1999).

Taylor did not make a request for separate findings of fact or conclusions of law under MRCP 52. Where a party does not request that the chancellor make separate findings and conclusions, the chancellor will not be held in error for failing to do so. *Turner v. Turner*, 744 So.2d 332 (Miss. App. 1999).

The Bells established by clear and convincing evidence that their possession of the disputed property was under claim of ownership, actual, open, notorious and visible. Their possession was uninterrupted for more than ten (10) years, and it was exclusive and peaceful. *Stewart v. Graber*, 754 So.2d 1281, 1284 (Miss. App. 1999)(setting forth the elements of adverse possession). The judgment of the trial court should be affirmed.

ARGUMENT

I. THE BELLS ESTABLISHED ADVERSE POSSESSION BY CLEAR AND CONVINCING EVIDENCE.

The evidence presented by the Bells clearly established adverse possession of the subject property claimed by Taylor. The testimony established that the Bells had the property surveyed, lived on the property and maintained the property. They lived on it continuously from 1974 until 2010, when Taylor attempted to assert ownership by building a fence. During this period, the Bells possession was open, notorious and visible, and it was exclusive and peaceful.

After hearing the testimony of the Bells and reviewing the evidence, the Chancellor made the only decision that could be supported by the evidence: He ordered that “a boundary line be established at the point halfway between the center line of the ditch to the fence post that’s set on the north end of the property and let it run due south.” Implicit in this ruling is a finding that the Bells had adversely possessed the subject property.

An appellate court will not disturb the findings of a chancellor unless they are manifestly wrong, clearly erroneous or an erroneous legal standard was applied. *Nichols v. Funderburk*, 883 So.2d 554, 556 (Miss. 2004). When there is substantial evidence to support a chancellor’s findings, an appellate court is without authority to disturb a chancellor’s conclusions. A *de novo* standard of review is utilized in analyzing the interpretation and application of the law by the chancellor. *Weissinger v. Simpson*, 861 So.2d 984, 987 (Miss. 2003).

In the instant case, the Chancellor found that there was sufficient evidence to support judgment for the Bells. His findings should not be disturb by this Court, even if it might have found otherwise as an original matter. *Nichols v. Funderburk*, 883 So.2d 554, 556 (Miss. 2004).

II. THE CHANCELLOR DID NOT COMMIT ERROR IN FAILING TO SPECIFICALLY FIND THE FACTS AS TO ADVERSE POSSESSION.

Taylor argues that the Chancellor committed error in failing to specifically find the facts as to the elements of adverse possession. Taylor did not make a request for specific findings of fact under MRCP 52. A party cannot complain of the absence of findings of fact when he fails to request them. *Illinois Cent. R.R. v. Samson*, 799 So.2d 20 (Miss. 2001). Additionally, where the Chancellor has made no specific findings, the appellate court should proceed on the assumption that the chancellor resolved all such fact issues in favor of the appellee. *Nichols v. Funderburk*, 883 So.2d 554, 556 (Miss. 2004).

The Chancellor in this case heard the evidence and determined that the facts were sufficient to establish adverse possession. Taylor should not be allowed to complain of the failure of the Chancellor to specifically find the facts where he failed to make a request as allowed by the Mississippi Rules of Civil Procedure.

III. THE TRIAL COURT DID NOT ERR IN ESTABLISHING A BOUNDARY LINE BETWEEN THE PARTIES.

In order to establish adverse possession the evidence must show that possession is: (1) under claim of ownership; (2) actual or hostile; (3) open, notorious and visible; (4) continuous and uninterrupted for a period of ten years; (5) exclusive; and (6) peaceful. *Thornhill v. Caroline Hunt Trust Estate*, 594 So.2d 1150, 1153 (Miss. 1992).

The evidence in this case clearly established by clear and convincing evidence that the Bells had met the elements for adverse possession. The Chancellor, after making this


determination, issued an order establishing a boundary to resolve the property dispute. The judgment of the Chancellor was supported by substantial evidence and should be affirmed by the Court.


CONCLUSION

The Chancellor found by clear and convincing evidence that the Bells had established the elements for adverse possession. Taylor argues that the Chancellor should have specifically found the facts with regard to each element. However, Taylor failed to exercise his right under MRCP 52 to request such findings. Where a party does not request that the chancellor make separate findings and conclusions, the chancellor will not be held in error for failing to do so. *Turner v. Turner*, 744 So.2d 332 (Miss. App. 1999).

There is no merit to any of the issues raised by Taylor. This Court should affirm the decision of the Chancery Court of the First Judicial District of Chickasaw County, Mississippi.

Respectfully submitted,
Alford Bell and Sheila Bell

By: 
RANDOLPH WALKER
THEIR ATTORNEY

RANDOLPH WALKER, ESQ.
WALKER LAW OFFICE, PLLC
POST OFFICE BOX 1492
408 EAST WALDRON STREET
CORINTH, MS 38835-1492
TELEPHONE: 662-665-9536/665-9560
TELECOPIER: 662/396-4329
MB# 
walker408@comcast.net