

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

**LARRY TAYLOR**

**APPELLANT**

**VS.**

**RE: CASE NO. 2010-CA-01912**

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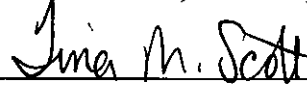
**ALFORD BELL & SHEILA BELL**

**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 justices of the Supreme court and/or the Judges of the court of appeals may evaluate possible disqualification or recusal.

1. Larry Taylor, Appellant (Defendant), 1674 S. Victoria Avenue, Los Angeles, CA 90019;
2. Alford Bell and Sheila Bell, Appellees (Plaintiffs), 237 Pittsboro Street, Houston, MS 38851;
3. Honorable Kenneth M. Burns, Chancellor, P. O. Box 110, Okolona, MS 38860
4. Randolph Walker, Attorney for Appellees, P. O. Box 1492, Corinth, MS 38835-1492; and
5. Tina M. Scott, Attorney for Appellant, P.O. Box 167, Houston, MS 38851.

  
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## **STATEMENT OF THE ISSUES**

1. Did the lower court err in “establish[ing] a boundary line between Mr. Bell and Mr. Taylor” absent clear and convincing evidence proving adverse possession by Mr. and Mrs. Bell?
2. Did the lower court err in merely “establish[ing] a boundary line between Mr. Bell and Mr. Taylor” absent any findings of facts as to each element of adverse possession?

## STATEMENT OF THE CASE

On December 4, 2009, Alford and Shelia Bell (hereinafter "Bell") filed their Complaint to Confirm Title and Remove Cloud on Title against Larry Taylor (hereinafter "Taylor") in the 1<sup>st</sup> Judicial District of Chickasaw County, Mississippi, asking for title to vest in a certain strip of property titled by deed in Taylor. ( R 3-13; RE 4-13)

Thereafter, Taylor filed his Answer and Counter-Complaint on about April 14, 2010, asserting that the strip of property was titled in his name and on which he had paid the taxes. ( R 14-18; RE 14-18); followed by Bells' Answer to Taylor's Counter-Complaint. ( R 19-20; RE 19-20)

The matter was tried before the Honorable Chancery Court on September 9, 2010, with Judgment rendered from the bench (T 39-40; RE 38-39), and then filed of record on or about October 19, 2010. ( R 24; RE22)

This matter involves a property line dispute via a claim of adverse possession by the Bells. The properties of the parties are adjoining and are located in a subdivision within the city limits of Houston.

Following the presentation of testimony, exhibits and a view of the premises by the court, the court issued a Judgment "establish[ing] a boundary line between Mr. Bell and Mr. Taylor at the point that is halfway between the center line of the ditch to the fencepost that's set on the north end of the property and let it run due south." (T 39-40; RE 38-39)

Feeling aggrieved, Mr. Taylor perfected his appeal.

### STATEMENT OF THE FACTS

The Bells and Mr. Taylor own adjoining lots within the city limits of Houston, Mississippi, within the 1<sup>st</sup> Judicial District of Chickasaw County.

All parties agree where the property line between their lots is according to their respective deeds and surveys. ( R 7-10, 12; Defendant's Exhibits - D1 & D-2; RE 8-13, 29-33)

Bell claims adverse possession of a strip of land included in Taylor's deed, as well as in both the survey procured by Mr. Bell and the one procured by Mr. Taylor. The parties stipulated to tax cards, i.e., that Mr. Taylor and his predecessors in title have consistently paid the taxes on the strip sought by Mr. Bell, and that Bell has never paid the taxes on that piece of property.

## **SUMMARY OF THE ARGUMENT**

As set out above, the facts of this case are fairly straightforward. The parties herein own adjoining lots in the town of Houston. The strip of land at issue is titled in Mr. Taylor, as it was in his predecessors in title.

The record clearly reflects that Mr. Bell did nothing more than mow the strip of land, most of which time Taylor's predecessors in title were aged and/or widowed. Furthermore, Mr. Bell consistently acknowledged the ownership of the strip of land by Taylor's predecessors in title, and then Taylor.

The Bells fall significantly short of meeting their burden of proving adverse possession. Commensurate therewith, the Bells' Complaint should be denied and dismissed.

At the very least, since there was not an on-the-record finding as to each element of adverse possession, this matter should be remanded for findings commensurate with instructions from this Court.

## **ARGUMENT**

### **I. STANDARD OF REVIEW**

The standard of review in these matters is well settled law in Mississippi, as recently reiterated:

When reviewing a chancellor's decision, we will accept a chancellor's findings of fact as long as the evidence in the record reasonably supports those findings. In other words, we will not disturb the findings of a chancellor

unless those findings are clearly erroneous or an erroneous legal standard was applied. (Peagler v. Measells, 743 So. 2d 389, 390 (Miss. Ct. App. 1999)). The chancellor, as the trier of fact, evaluates the sufficiency of the proof based on the credibility of witnesses and the weight of their testimony. (Ellison, 820 So. 2d 734) (citation omitted)). The standard of review for questions of law is de novo.

Niebanck v. Block, 35 So. 3d 1260, 1263 (Miss. Ct. App. 2010). See also: Cook V.

Robinson, 924 So. 2d 592, 594 (Miss. Ct. App. 2006).

## II. ADVERSE POSSESSION and the STANDARD OF PROOF

“Adverse Possession” is defined by statute as:

Ten (10) years’ actual adverse possession by any person claiming to be the owner for that time of any land, uninterrupted, continued for ten (10) years by occupancy, descent, conveyance, or otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title[.]

Miss. Code Ann. §15-1-13(1). (Noting: portion re: saving as to persons under disability intentionally omitted, as not applicable herein.)

The standard of proof in adverse possession cases is also well settled in Mississippi law. Mississippi, long disfavoring the acquisition of another’s land via adverse possession, has prudently set the standard as requiring “clear and convincing evidence” to prevail on such a claim.

This Honorable Court has repeatedly and consistently set forth the elements and standard in adverse possession cases. The elements and standard were recently again set forth succinctly in Knight v. Covington County, 27 So. 3d 1163, 1167 (Miss. Ct. App. 2009), as follows: “[F]or possession to be adverse it must be (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.” (quoting Blackburn v. Wong, 904 So. 2d 134, 136 (¶ 15) (Miss. 2004) (citations omitted)). The Knight court went on to state that, “[t]he party claiming adverse possession must prove each element by clear and convincing evidence. Id. (citations omitted)” Knight, 27 So. 3d @ 1167.

III. DID THE LOWER COURT ERR IN “ESTABLISH[ING] A BOUNDARY LINE BETWEEN MR. BELL AND MR. TAYLOR” ABSENT CLEAR AND CONVINCING EVIDENCE PROVING ADVERSE POSSESSION BY MR. AND MRS. BELL?

To restate the obvious, the Bells have the burden of proof, by clear and convincing evidence of each and every element of adverse possession as set forth by the Knight court, it predecessors and successors.

Mr. Bell’s testimony alone defeats his claim of adverse possession. The properties of the Bells and Taylor are adjoining with a ditch running through Mr. Taylor’s property. Mr. Taylor’s predecessors in title, the Freemans, were older, and in fact, Mr. Freeman had passed away prior to 1984. (See T17-18; RE 36-37). The Bells had lived next door to the Freemans until Mr. Freeman’s passing, and then remained next-door neighbors with Mrs. Freeman until she sold the property to Mr. Terry Taylor, brother of Defendant, Mr. Larry Taylor, in August of 2004.

Besides the approximately six and one-half (6 ½) foot portion of Taylor’s property on which a part of Mr. Bell’s home sets, Mr. Bell testified that all he did was to mow the remaining portion from his property line to the ditch. (T17-18; RE 36-37) Mr. Bell testified that all along he knew and acknowledged that the strip of property now in dispute

belonged to the Freemans and then to Mr. Taylor. He testified that he effectively had permission to be on the property by both the Freemans and Mr. Taylor. (T 16-18; RE 35-37)

Mr. Bell offered testimony stating that he attempted to purchase the strip of property from Mrs. Freeman and then from Mr. Taylor. (T 16; RE 35) That is, Mr. Bell's acts and testimony show that he lacked the "intention to possess and hold [the strip of] land to the exclusion of and in opposition to, the claims of all others, and [his] conduct [] [belies] an unequivocal indication that he [was] exercising dominion of a sole owner." Lynn v. Soterra, Inc., 802 So. 2d 162, 168 (Miss. Ct. App., 2001) (quoting Rawls, 602 So. 2d @ 1169 (quoting 2 C.J.S. *Adverse Possession* §§ 54 (1972))).

An inequitable and unjust precedent would be set should the Bells be allowed to prevail on their claim, which essentially asserts that mowing the yard of the elderly under the guise of neighborly kindness could result in the loss of property to the elderly, infirmed and / or widowed.

Accordingly, based on the law and the facts as presented, Mr. Taylor respectfully submits that the judgment of the lower court should be reversed and rendered, denying the Bells' requested relief for title via adverse possession, with all appropriate costs assessed to the Bells.

IV. DID THE LOWER COURT ERR IN MERELY "ESTABLISH[ING] A BOUNDARY LINE BETWEEN MR. BELL AND MR. TAYLOR" ABSENT ANY FINDINGS OF FACTS AS TO EACH ELEMENT OF ADVERSE POSSESSION?

Alternatively, inasmuch as the lower court did not flesh out its judgment with an

on-the-record findings-of-facts as to each element of adverse possession, Mr. Taylor would submit that this matter should at least be reversed and remanded for specific findings relative to the honorable chancellor's judgment and commensurate with any instructions of this Court.

### CONCLUSION

Based on the well settled law relative to adverse possession as applied to the straight forward facts in this matter, Mr. Taylor respectfully submits that the Bells have not and can not meet their burden of clear and convincing evidence supporting their claim of adverse possession. Accordingly, Mr. Taylor respectfully requests that this case be reversed and rendered in his favor, with all appropriate and allowable costs and fees assessed to the Bells.

Alternatively, Mr. Taylor respectfully submits that this case should at least be remanded for on-the-record findings as to each element of adverse possession.

Respectfully submitted,



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**CERTIFICATE OF MAILING**

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I, **TINA M. SCOTT**, certify pursuant to Rule 25(a) of the Mississippi Rules of Appellate Procedure that on the 30<sup>th</sup> day of June, 2011, I delivered by Fed Ex delivery, to the Mississippi Supreme Court Clerk the original and three copies of the Brief of Appellant.

SO CERTIFIED, this the 30<sup>th</sup> day of June, 2011.



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**TINA M. SCOTT, Attorney for Appellant**