IN THE SUPREME COURT OF MISSISSIPPI

Case No. 2010-CA-02000

HEMETER PROPERTIES, LLC,
PEACHTREE PROPERTIES, LLC,
GARDNER CLARK FAMILY, LLC,
T R CLARK, LLC,
CHARLES M. HAMILTON,
JAMES STEVEN GARDNER,
ADRIAN CODY CLARK,
FRANKLIN D. HEMETER, JR.,
STEPHANIE A. BAREFOOT,
AND JAMES SCOTT HEMETER — APPELLANTS

VERSUS

REYNOLDS CLARK — APPELLEE

APPEAL FROM THE CHANCERY COURT
OF WAYNE COUNTY, MISSISSIPPI

BRIEF OF APPELLEE
REYNOLDS CLARK

ORAL ARGUMENT NOT REQUESTED

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STATEMENT REGARDING APPELLANTS' REQUEST FOR ORAL ARGUMENT

This case was tried before the Chancellor upon agreed stipulated facts and documents. No oral evidence whatsoever was presented. The issues are straightforward and present legal questions. In their briefs, the parties have advanced their respective arguments about the stipulated facts and documents. The law has also been briefed. No additional assistance will be afforded to the Court by the granting of oral arguments. Therefore, in the interest of judicial expediency and efficiency, and costs savings to the parties, the Appellee does not request oral argument.

STATEMENT OF THE CASE

Reynolds Clark filed his Complaint to Remove Cloud on Title on December 16, 2008. The defendant filed an answer and counterclaim on April 27, 2009. The case deals with the ownership of minerals, royalty and overriding royalty under the SE 1/4 of the NE 1/4 of Section 20, Township 8 North, Range 6 West, Wayne County, Mississippi. The disputed interests are currently in a suspense status with all proceeds of hydrocarbon production being withheld pending a final resolution of this matter by the Courts.

The royalty and overriding royalty interests in dispute and claimed by both the Appellants and the Appellee is: Royalty interest 45% x 5916/61776 x 1/8.

The Appellee and the Appellants claim under two separate chains of title but both titles originate from a common source.

After discovery was conducted by the parties, the Chancery Court (Chancellor Frank McKenzie) set the case for trial on February 23, 2010.

The case was submitted to the Chancery Court on written Stipulation of Facts. Documents marked Exhibits 1 - 49 were jointly introduced into evidence with agreement as to authenticity.

On Court order entered March 1, 2010, the Chancery Court acknowledged that the case was submitted for decision upon the written stipulation with exhibits jointly submitted received into evidence (Vol. I, pp 64 - 67, 67A - 67E; Appellants' R.E. Tab 3).

Memorandum briefs were submitted within 30 days as the order provided (Vol. I, pp 68 - 69).

Chancellor McKenzie, on September 28, 2010, entered "Findings of Fact, Conclusions of Law, and Final Judgment Removing Cloud on Title" by which the Chancellor found in favor of Appellee Reynolds Clark (Vol. II, pp 156 - 160; Appellants' R. E. Tab 4).

The Appellants then, on October 7, 2010, filed a motion entitled "Motion to Amend

Pleadings to Conform to the Evidence and for Reconsideration or to Alter or Amend Judgment." (Vo. II, pp 161 - 173; Appellants' R. E. Tab 5).

After oral argument allowed by the Chancellor, by order entered November 22, 2010, the Chancellor overruled the motion. (Vol. II, p 179; Appellants' R. E. Tab 6).

Thereafter, on December 3, 2010, Appellants filed Notice of Appeal (Vol II, pp 180 - 181).

STATEMENT OF THE FACTS

The Appellee claims title to the disputed interests under one chain of title and the Appellants claim title under a separate chain of title, each originating from a common source.

Title to the subject real property was granted by the Untied States Government to Mobile and Ohio Railroad on February 4, 1853. By deed dated November 18, 1890 (Ex. 2) the said railroad conveyed the real property and other real property to J. G. Meador. Ben Meador gained title to the involved real property on April 19, 1946, through a Court decree entered in a partition suit, subject to an outstanding one-eighth non-participating royalty interest allocated to all of the heirs including Ben Meador, based on the interests of each (Ex. 4).

Ben Meador died on February 16, 1962, seized and possessed of the SE-1/4 of the NE-1/4 of Section 20, Township 8 North, Range West, Wayne County, Mississippi. Ben Meador was married to Martha Meador; however, there were no children born or adopted to or by either of them. Ben Meador was survived by his wife, Martha Meador, who died intestate on September 19, 1973 (Appellee's R. E. Tab 3).

At the time of his death, Ben Meador had executed a valid last will and testament on September 1, 1960. However, this will was not probated until after the death of Martha Meador. Under the terms and provisions of this will, Ben Meador left his wife, Martha Meador, a life estate in his entire estate, with the remainder interest to Father Flanagan's Boys' Home (Appellee's R. E. Tab 2).

Prior to her death, Mrs. Ben Meador, by G. B. Cole, attorney-in-fact, had executed a deed to Charles H. Cole, IV. This deed was executed on August 24, 1972, and recorded in Land Deed Record 445 at Page 505. See Exhibit 8. Charles H. Cole was Martha Meador's brother. He was an invalid and never gainfully employed. Martha Meador died September 19, 1973, and G. B. Cole

applied for Letters of Administration which were granted by the Chancery Court of Wayne County, Mississippi, in cause number 13,762 (Appellee's R. E. Tab 5).

Thereafter, the last will and testament of Ben Meador was admitted to probate by the Chancery Court of Wayne County, Mississippi, on March 29, 1978, in cause number 14,062. After discovering the terms and provisions of the last will and testament of Ben Meador, G. B. Cole, Administrator of the Estate of Martha Meador, filed a final accounting which recognized the fact that Martha Meador owned no more than a life estate in and to the property in question (Appellee's R. E. Tab 3).

A Judgment was entered in the estate of Ben Meador interpreting the last will and testament of Ben Meador. Justice Mike Sullivan was appointed as special chancellor to hear this matter and he found "that the last phrase of the aforesaid article of the will to-wit: "upon the condition that said land never be sold" is void as an illegal restraint on alienation contrary to Section 89-1-15, Mississippi Code of 1972," is contrary to the terms of the Mortmain Statute (Sec. 19-15-31, Mississippi Code of 1972) which requires that a charity to which real property is devised under a will must divest itself of its real property within ten years after said property becomes "legally owned and held"; and is contrary to the public policy of the state and the holdings of the Mississippi Supreme Court in general, and particularly that certain case styled ***IN RE Estate of Kelly, 193 So.2d 575 (Miss. 1967)***. Justice Sullivan further found that the true intent and purpose of Ben Meador's will concerning the real property was that upon the death of his wife, who was vested with as life estate in said property, that Father Flanagan's Boys' Home was vested with the remainder interest in said property (Appellee's R. E. Tab 6).

By Quitclaim Deed dated August 2, 1978, and recorded in land Deed Record 524 at Page 754, Father Flanagan's Boys' Home conveyed the subject property to Reynolds Clark and Robert

T. Comerio; however this deed excluded the mineral interest (Appellee's R. E. Tab 7).

By Quitclaim Deed from Father Flanagan's Boys' Home to Reynolds Clark dated December 8, 1978, and recorded in Land Deed Record 524 at Page 758, Father Flanagan's Boys' Home conveyed all mineral interest in and under the subject property to Reynolds Clark (Appellee's R. E. Tab 8).

By Quitclaim Deed dated January 3, 1979, and recorded in Land Deed Record 524 at Page 902, G. B. Cole and C. H. Cole, IV, conveyed the subject property to Reynolds Clark. Reynolds Clark, et al, filed a complaint against the unknown heirs of Martha S. Meador in cause number 14,352, to confirm title to the subject property, and a final decree was entered on February 2, 1979 (Appellee's R. E. Tab 9).

By Mineral Right and Royalty Transfer dated April 21, 1983, Charles H. Cole, IV, and Gerald B. Cole executed a Mineral Deed to the subject property to Nolan Clark. This deed is recorded in Land Deed Record 586 at Page 666, and in Oil and Gas Mineral Lease Book 1173 at Page 589 (Appellee's R. E. Tab 12).

Nolan Clark died June 28, 2996, leaving a value last will and testament which was admitted to probate by the Chancery Court of Wayne County, Mississippi, in cause number 96-0282 (Appellee's R. E. Tab 13).

Defendants in the above styled and numbered cause claim their interest in and to the subject minerals by and through Nolan Clark (Ex. 24 - 31).

ARGUMENT I

THE PROVISION THAT THE SUBJECT PROPERTY NOT BE SOLD DID NOT VOID THE DEVISE TO FATHER FLANAGAN'S BOYS' HOME.

In support of their position concerning the will of Ben Meador, Appellants take the position that the provision in said will "upon the condition that said land never be sold" voided the devise to Father Flanagan's Boys' Home. Appellants have cited several cases in support of their proposition, ***Hearn v. Autumn Woods Office Park Property Owners Association, 757 So.2d 155 (Miss. 1999); Tinnin v. First United Bank of South Mississippi, 502 So.2d 659 (Miss., 1987); Johnson v. Board of Trustees of Mississippi Annual Conference of the Methodist Church, 492 So.2d 269 (1986); and Moffett v. Howard, 392 So.2d 509 (Miss. 1981).***

In ***Hearn v. Autumn Woods Office Park Property Owners Association, supra***, the question was before the court as to whether or not a tax sale extinguished an easement created by a declaration of covenants and filed in conjunction with a subdivision plat. This case has nothing to do with a devise of property but merely whether or not the tax sale extinguished the easement and the court held that it did not.

In ***Tinnin v. First United Bank of South Mississippi, supra***, the issue was before the court as to whether or not a racially restrictive clause against public policy caused the trust to fail and the property to be distributed to the testator's heirs. This court did not reach a decision on the issue but rather remanded the case for determination of whether the unenforceable racial exclusion was integral or incidental to the testator's purpose. The lower court had found the unlawful racial restriction was only incidental and not integral to the primary objective of the testator, and therefore the court sustained the trust minus the discriminatory provision. The supreme court held that the

record was inadequate to enable them to answer the question with confidence, and remanded the same to the Chancery Court for further consideration for a correct resolution of the matter. Therefore, no decision on the issue was made in this case.

Moffett v. Howard, supra, dealt with the issue as to whether residuary bequests and devises were gifts to individuals rather than a class gift. Ellzey Moffett executed a last will and testament and made a residuary bequest and devise to his only daughter, and eight named brothers and sisters, Zeke C. Moffett, Frank W. Moffett, Charlie H. Moffett, George R. Moffett, Bessie V. Moffett, Maymie M. Harrison, Mrs. Jimmie M. DePietro, and Guy W. Moffett, share and share alike. Following the execution of the will, one sister and three brothers named in the residuary clause predeceased the testator. The lower court held that the bequest and devise was to individuals and not a class gift. The court held that by the weight of authority, the lapsed portion of the residuum does not itself pass into the remainder of the residuum, but it passes to the testator's next of kin as in testate property (p. 521). This is not an issue that is before the court in this matter.

Johnson v. Board of Trustees of Mississippi Annual Conference of the Methodist Church, supra, deals with the issue of whether or not the devise under the will of George E. Hodges violated the Statute of Mortmain. This issue will be dealt with later in this brief, however, in Johnson the court held that the Mortmain statute was not violated.

In the case at hand, the issue as to whether or not the provision in Ben Meador's will that the property never be sold was void, was presented to the Chancery Court in the estate of Ben Meador. A judgment was entered interpreting the last will and testament of Ben Meador by Justice Mike Sullivan, who was appointed a Special Chancellor to hear said matter. In holding the devise valid, Justice Sullivan cited ***In Re Estate of Kelly, 193 So.2d 575 (Miss. 1967)***, and found the true intent and purpose of Ben Meador's will concerning the real property, was that upon the death of Ben's

wife who was vested with a life estate in the property. Father Flanagan's Boys' Home was vested with the remainder interest in the property. Justice Sullivan's decision was not appealed.

In ***Tinnin, supra***, it is stated (p. 663) "One of the great chapters in the evolution of the rights of man records the winning of the right of testation, the power by will to control from the grave what becomes of one's property. The power derives from legislative grant." ***Miss. Code Ann.*** Sec. 91-5-1 (1972). It is exercised by the competent adult as he sees fit subject to few limitations, and where the testator has acted in conformity with our empowering statutory rules, his will is valid. It becomes in theory almost sacred and in practice judicially enforceable, not withstanding the testator's death and public or private inconvenience.

In ***Deposit Guaranty National Bank of Jackson v. First National Bank of Jackson, 352 So.2d 1324 (Miss. 1977)***, at p. 1327, it is stated

> "There are a number of cases setting out the duty of the courts in construing wills and trust. The duty is the same, whether by the lower court or this court. The paramount and controlling consideration is to ascertain and give affect to the intention of the testator. In arriving at this intention, the court is required to consider the entire instrument, sometimes said 'from the four corners of the instrument.' Where the instrument is susceptible to more than one construction, it is the duty of the court to adopt the construction which is most consistent with the intention of the testator."

In ***Burgess v. Granberry, 310 So.2d 708 (Miss. 1975)***, at p. 711, the court stated:

> "We have said in numerous cases that the fundamental rule governing the construction of all wills is to ascertain the intent of the testator. This intent must be gathered from the entire will, or as is sometimes said from the four corners of the instrument. Giving due consideration and weight to every word of the will, the

language used in a single clause or sentence does not control against the purpose and intention as shown by the whole will. The will must be construed in light of the circumstances surrounding the testator at the time the will was written.

"When the intent of the testator has been in this way ascertained, all minor, subordinate and technical rules of construction must yield to the paramount intent thus ascertained."

Appellants have also raised the issue that the court may not give effect to doubtful trust provisions by invoking the doctrine of ***cypres*** is certainly applicable to the case at bar. As defined by ***Black's Law Dictionary***, p. 464, ***cypres*** is defined as follows:

"'as near as (possible)'. The rule of cypres is a rule for the construction of instruments in equity by which the intention of the party is carried our as near as may be, when it would be impossible or illegal to give it literal affect. Thus, where a testator attempts to create a perpetuity, the court will endeavor instead of making the devise entirely void, to explain the will in such a way as to carry out the testator's general intention as far as the rule of perpetuities will allows."

ARGUMENT II.

THE STATUTE OF MORTMAIN IS NOT APPLICABLE TO THE CASE AT BAR

Appellants raise the issue as to the applicability of the statute of Mortmain claiming that the same is applicable to the case at bar. In support thereof, Appellants have cited ***Blackbourn v. Tucker, 72 Miss. 735, 17 So. 737 (1895); Mississippi College v. May, 235 Miss. 200, 108 So. 703; May v. Hunt, 404 So.2d 1373 (Miss. 1981); Alexander v. Richardson, 217 Miss. 517, 64 So. 217 (1914); Hudson v. Moon, 732 So.2d 927 (Miss. 1999); Mississippi Hospital v. Slack, 330 So.2d 882 (Miss. 1976); Cook v. Commercial National Bank and Trust Company, 375 So.2d 1006 (Miss.***

1979), and In Re Estate of McWright, 766 So.2d 48 (Miss. App. 2000). This is not applicable to the case at bar because the statute of Mortmain in existence at the time ***Blackbourn*** was decided has long since been amended to provide for the ten year period for charitable institutions to dispose of property.

Section 270 of the ***Mississippi Constitution*** and Section 671 ***Miss. Code 1942***, provide as follows:

> "...any land devised, not in violation of this section, to any charitable, religious, educational, or civil institution maybe legally owned and further may be held by the devisee for a period of not longer than ten years after such devise becomes effective,..."
>
> "provided further, that within said period of ten years during which such land may be held, the charitable, religious, educational or civil institution holding the same shall have the power and right to sell and convey the said lands so held, or any part thereof, and its deed of conveyance may be treated as passing such title thereto as was possessed by the testator,... But if such land not be sold and disposed of within the said period of ten years, then it in that event, at the expiration of the said ten years, it shall revert to the heirs at law of the testator under whose will it was devised to the institution holding it, or to the devisees under such will as the case may be."

In ***Mississippi College v. May***, supra, Mississippi College held the property in question for more than ten years before attempting to sell the same. This case is a clear example of the applicability of the statute of Mortmain; however, Father Flanagan's Boys' Home did not hold or become vested with title and holding it for more than ten years, therefore, the theme is not applicable to the case at bar.

Alexander v. Richardson, supra, does not deal with charitable institution, but rather deals with the vesting of title in certain persons, and has no applicability to the case before this court.

Appellants have also cited ***Hudson v. Moon, supra***. That case clearly states at page 932 that any land devised to a charitable institution, religious, educational, or civil institution may be held by the devisee not longer than ten years after the devise becomes effective of a fee simple or possessory interest. The devise to Father Flanagan's Boys' Home did not become effective until such time as the last will and testament of Ben Meador was probated with the Chancery Court of Wayne County, Mississippi.

The cases of ***Mississippi Hospital v. Stack, supra,*** and ***Cook v. Commercial National Bank and Trust Company, supra***, deal with trusts created for charitable institutions. This situation does not exist in the case before this court and therefore these cases are not applicable.

In his decision in the Estate of Ben Meador, Justice Sullivan's reasoning was sound when he ruled that the Mississippi Mortmain statute in effect at the time did not require Father Flanagan's Boys' Home to sell the property within ten years after Ben's death. Father Flanagan's Boys' Home did legally own and hold the property as required by the statute, because Martha Meador held the property through her life estate until the date of her death. Ben Meador died February 16, 1962. His sole heir at law was his wife, Martha Meador, who died intestate on September 19, 1973. Ben Meador's will was not admitted to probate until March 29, 1978. Father Flanagan's Boys' Home did not become vested with an interest in the property until such time as said will was probated. Therefore, no estate was created in Father Flanagan's Boys' Home until that time. Justice Sullivan's reasoning was based on ***In Re Estate of Kelly, 193 So.2d 575 (1967).***

ARGUMENT III.

SPECIAL CHANCELLOR SULLIVAN'S ORDER IN CAUSE NUMBER 14,064

The order issued by Special Chancellor Mike Sullivan is not addressed at this time because it is addressed elsewhere in this brief.

ARGUMENT IV.

DEED TO CHARLES C. COLE, IV, WAS ONLY FOR A LIFE ESTATE AND HE WAS NOT A BONAFIDE PURCHASE FOR VALUE, NOR WAS NOLAN CLARK

Prior to her death, Mrs. Ben Meador, by G. B. Cole, attorney-in-fact, had executed a deed to Charles H. Cole, IV. This deed was executed on August 24, 1972, and recorded in Land Deed Record 445 at Page 505 ***(Appellee's RE Tab 4)***. Charles H. Cole was Martha Meador's brother. He was an invalid and never gainfully employed. Martha Meador died September 19, 1973, and G. B. Cole applied for Letters of Administration which were granted by the Chancery Court of Wayne County, Mississippi, in cause number 13,762 ***(Appellee's RE Tab 5).***

Thereafter, the last will and testament of Ben Meador was admitted to probate by the Chancery Court of Wayne County, Mississippi, on March 29, 1978, in cause number 14,062. After discovering the terms and provisions of the last will and testament of Ben Meador, G. B. Cole, Administrator of the Estate of Martha Meador, filed a final accounting which recognized the fact that Martha Meador owned no more than a life estate in and to the property in question ***(Appellee's RE 3).***

A Judgment was entered in the estate of Ben Meador interpreting the last will and testament of Ben Meador. Justice Mike Sullivan was appointed as special chancellor to hear this matter and he found "that the last phrase of the aforesaid article of the will to-wit: "upon the condition that said land never be sold" is void as an illegal restraint on alienation contrary to Section 89-1-15, Mississippi Code of 1972," is contrary to the terms of the Mortmain Statute (Sec. 19-15-31, Mississippi Code of 1972) which requires that a charity to which real property is devised under a will must divest itself of its real property within ten years after said property becomes "legally owned and held"; and is contrary to the public policy of the state and the holdings of the Mississippi Supreme

Court in general, and particularly that certain case styled ***IN RE Estate of Kelly, 193 So.2d 575 (Miss. 1967)***. Justice Sullivan further found that the true intent and purpose of Ben Meador's will concerning the real property was that upon the death of his wife, who was vested with as life estate in said property, that Father Flanagan's Boys' Home was vested with the remainder interest in said property (Appellee's RE Tab 6).

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By Quitclaim Deed dated January 3, 1979, and recorded in Land Deed Record 524 at Page 902, G. B. Cole and C. H. Cole, IV, conveyed the subject property to Reynolds Clark. Reynolds Clark, et al, filed a complaint against the unknown heirs of Martha S. Meador in cause number 14,352, to confirm title to the subject property, and a final decree was entered on February 2, 1979 (Appellee's RE Tab 9).

By Mineral Right and Royalty Transfer dated April 21, 1983, Charles H. Cole, IV, and Gerald B. Cole executed a Mineral Deed to the subject property to Nolan Clark. This deed is recorded in Land Deed Record 586 at Page 666, and in Oil and Gas Mineral Lease Book 1173 at Page 589 (Appellee's RE Tab 12).

Nolan Clark died June 28, 1996, leaving a valid last will and testament which was admitted to probate by the Chancery Court of Wayne County, Mississippi, in cause number 96-0282 (Appellee's RE Tab 13).

Defendants in the above styled and numbered cause claim their interest in and to the subject minerals by and through Nolan Clark (See Exhibits 24 through 31).

At the time Nolan Clark acquired the Mineral Right and Royalty Transfer from Charles H. Cole, IV, the records in the office of the Chancery Clerk were replete with information that Martha Meador only owned a life estate in the property at the time she conveyed it to Charles H. Cole, IV. (1) The estate of Martha Meador had been opened and the Final Account was on record (Appellee's RE Tab 3). (2) The estate of Ben Meador had been opened, and his will was on record (Appellee's RE Tab 2), as well at Justice Sullivan's interpretation of the will (Appellee's RE Tab 6). And (3) The deeds to Reynolds Clark were of record, as well as the suit to confirm title. It is well stated in ***Spearman v. Hussey, 50 So.2d 610***, at Page 615, that the purchaser of land is conclusively presumed to know what appears on the face of the title papers under which he claims. The purchaser must take notice of his title as being a life estate or a fee, particularly where the title is plainly disclosed by the records, not to examine them would be gross negligence. See also ***Buckley v. Garner 925 So.2d 1030 (Miss. 2005)***, in which the court held that a purchaser is chargeable with inquiry notice if he knew another was in possession of the property.

See also ***Harrell v. Lamar Co. LLC, 925 So.2d 87 (Miss. 2005)***, where the court stated "a purchaser of land charged with notice not only of every statement of fact made in various conveyances constituting his chain of title, but he is also bound to take notice and to fully explore and investigate all facts which his attention may be directed as recitals in said conveyances contain. The duty is also imposed on him to examine all deeds and conveyances previously executed and placed of record by his Grantor - either immediate or remote - if such deeds or conveyances in any way affect his title. And if in any such deed or conveyance there is contained any recital sufficient to put a reasonable prudent man on inquiry as to the sufficiency of the title, then he is charged with notice of all facts, which could and would be disclosed by diligent and careful investigation.

See also ***Johnson v. Carter, 11 So.2d 196 (Miss. 1943)***, wherein it is stated at page 789 "to divest the transaction of good faith it is necessary only that there be circumstances or knowledge which are calculated to create suspicion as to the title or to put a prudent purchaser on inquiry."

To defeat an unrecorded conveyance (as in the case of the will of Ben Meador), the purchaser of the property must prove that he was a bona fide purchaser for a valuable consideration without actual or constructive notice of the unrecorded instrument. A valuable consideration is paid by one at the time of the purchase when he advances a new consideration, surrenders some security, or does some other act which if his purchase were set aside would leave him in a worse position than that which he occurred before the purchase. See ***Buckley v. Garner, 935 So.2d 1030 (Miss. 2005)***.

ARGUMENT NO. V.

THE CHANCELLOR'S FINDING OF FACT NOT REVERSIBLE UNLESS MANIFESTLY WRONG

It is settled law that the findings of fact by a Chancellor are not reversible unless manifestly wrong. ***Warner's Griffith, Mississippi Chancery Practice*** (Rev. Ed.), § 674.

In this case two Chancellors (Frank McKenzie; Mike Sullivan) have made findings of fact which are dispositive of the issues raised on appeal by the Appellant. The findings of Special Chancellor Sullivan were not appealed.

Both Chancellors wrote well-reasoned decisions in entering their findings of fact. The Chancellors' judgments in this matter should be sustained (Appellee's RE Tab 6, Appellants' RE Tab 4).

Judgment should be affirmed for the Appellee.

CONCLUSION

The Chancellor was correct in his findings that the condition that the land "never be sold" was void and it had been stricken from the will, but in all other aspects the will stayed in effect, and that the statute of Mortmain was not applicable in this case. The court further found that the Appellants did not raise the affirmative defense of a bona fide purchaser value in their answer or counter-claim, or any other pleadings in the court file.

There was no proof that Charles H. Cole, IV, was a bona fide purchaser who gave consideration for the property.

The court correctly found that Charles H. Cole, IV., and Nolan Clark were on notice of the face that Martha Meador only owned a life estate in the property.

The court, therefore, canceled the claim of Appellants as a cloud on Appellee's title and adjudicated Appellee to be the owner of the mineral interest in question.

The court's finding and judgment was based on stipulated facts (Appellants' RE Tab 3) and agreed exhibits.

Therefore, the judgment of the lower court should be affirmed.

Respectfully submitted,

REYNOLDS CLARK, Appellee

BY: _____
Of Counsel

BY: _____
Of Counsel

CERTIFICATE OF SERVICE

I, John L. Jeffries, one of the attorneys of record for Reynolds Clark, Appellee, do hereby certify that I have this day mailed, by United States Mail, postage prepaid, a true and correct copy of the ***BRIEF OF APPELLEE REYNOLDS CLARK*** to the following:

Honorable Franklin C. McKenzie, Jr.
Chancery Court Judge
Post Office Box 1961
Laurel, MS 39441-1961

Hon James L. Quinn
Attorney at Law
Post Office Box 271
Hattiesburg, MS 39403-0271

This the 21 day of April, A.D., 2011.

JOHN L. JEFFRIES, Attorney for
Appellee Reynolds Clark