

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BARBARA JACKSON

APPELLANT

VS.

NO. 2010-CP-00062

DAVID J. LOWE, SR. and
PATRICIA A. LOWE

APPELLEES

-AND-

DAVID J. LOWE, SR. and
PATRICIA A. LOWE

CROSS-APPELLANTS

VS.

BARBARA JACKSON, a/k/a BARBARA
JEAN S. JACKSON, CLEOTHA LINDSEY
AND GRETA LINDSEY

CROSS-APPELLEES

BRIEF OF APPELLEES / CROSS-APPELLANTS

ORAL ARGUMENT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to M.R.A.P. 28(a)(1), the undersigned counsel of record for appellee hereby certifies that the following persons and entities 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.

1. The Honorable Cynthia Brewer, Chancery Court Judge
2. David J. Lowe, Sr., Appellee / Cross-Appellant
3. Patricia A. Lowe, Appellee / Cross-Appellant
4. Barbara Jackson, Appellant / Cross-Appellee
5. Cleotha Lindsey, Cross-Appellee
6. Greta Lindsey, Cross-Appellee
7. C. Brent Jones, Esquire, Attorney for Cleotha Lindsey and Greta Lindsey
8. Matthew S. Poole, Esquire, former Attorney for Barbara Jackson
9. Paul Hastings, Esquire, former Attorney for Barbara Jackson
10. Bernard C. Jones, Jr., Attorney for David J. Lowe, Sr. and Patricia A. Lowe.

DAVID J. LOWE, SR. and
PATRICIA A. LOWE

BY: 


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STATEMENT OF THE ISSUES

1. WHETHER THE TRIAL COURT WAS CORRECT IN GRANTING SUMMARY JUDGMENT IN FAVOR OF THE PLAINTIFFS, DAVID J. LOWE, SR. AND PATRICIA A. LOWE.
2. WHETHER THE TRIAL COURT ERRED IN FAILING TO AWARD DAMAGES AND ATTORNEY'S FEES AGAINST THE DEFENDANTS, BARBARA JACKSON, CLEOTHA LINDSEY AND GRETA LINDSEY.

STATEMENT OF THE CASE

After many months of failed self help attempts to clear the title to their home in an amicable fashion, on September 11, 2008, David J. Lowe, Sr. and his wife, Patricia A. Lowe, filed their Complaint to Remove Cloud On Title and For Other Relief in Madison County Chancery Court. The complaint named as defendants, Barbara Jackson, also known as Barbara Jean S. Jackson, Cleotha Lindsey, Greta Lindsey, First Magnus Financial Corporation¹ and all other persons claiming any legal or equitable interest in the subject property.

On January 20, 2009, the plaintiffs served the defendants with plaintiffs' First Request for Admissions as well as plaintiffs' First Set of Interrogatories and First Request for Production of Documents and Things. On March 4, 2009, plaintiffs served a Motion to Compel asking the Court to order the defendants Barbara Jackson, Cleotha Lindsey and Greta Lindsey to respond to plaintiffs' interrogatories and production requests.² Also on March 4, 2009, the plaintiffs served their Motion for Summary Judgment as to the defendants Barbara Jackson, Cleotha Lindsey and Greta Lindsey. (RE 1-12).

On May 22, 2009, the Trial Court held a hearing on plaintiffs' Motion for Summary Judgment. On June 1, 2009 the Trial Court entered its Order Granting Summary Judgment. (RE 13-

¹First Magnus Financial Corporation was subsequently dismissed as a defendant pursuant to a Notice of Dismissal filed by the plaintiffs on June 26, 2009.

²On March 10, 2009, the defendants Cleotha Lindsey and Greta Lindsey served plaintiffs' counsel with a paper styled "Answer to Plaintiff's Interrogatories". While not an issue in this appeal, plaintiffs aver that this paper is not a proper response to the interrogatories propounded by plaintiff as it is incomplete and does not comply with the requirements of Uniform Chancery Court Rule 1.10(A). That said, and more importantly, the plaintiffs have not received any response in any form whatsoever to plaintiffs' Request for Admissions from any of the defendants. It should be noted, however, that Cleotha Lindsey did cooperate with discovery by appearing for his deposition.

14).

On June 30, 2009, plaintiffs submitted a proposed Final Judgment to the Court and to counsel opposite. On or about July 2, 2009, counsel for plaintiffs received a copy of a Motion to Reconsider filed by the defendant Barbara Jackson. On or about July 13, 2009, counsel for plaintiffs received a Notice of Objection to Plaintiff's Proposed Final Judgment filed by the defendants Cleotha Lindsey and Greta Lindsey.

Barbara Jackson, Cleotha Lindsey and Greta Lindsey took no action to have their motions heard. On September 28, 2009, counsel for plaintiffs, with the assistance of the court administrator, contacted counsel for Barbara Jackson, and counsel for Cleotha Lindsey and Greta Lindsey, and had the defendants motions set for hearing on November 13, 2009. On October 19, 2009, plaintiffs served their Motion to Strike the motions filed by the defendants. Plaintiffs' motion was also set for hearing on November 13, 2009.

On November 23, 2009, the Court entered an order denying Barbara Jackson's Motion to Reconsider. On December 11, 2009, the Court entered an order denying plaintiffs' Motion to Strike. Also on December 11, 2009, the Court entered its Final Judgment herein. (RE 15-21) Thereafter the parties perfected this appeal.

SUMMARY OF THE ARGUMENT

The Trial Court was correct in granting Summary Judgment against the defendants Barbara Jackson, Cleotha Lindsey and Greta Lindsey. The defendants failed to respond to the plaintiffs' Request for Admissions and the matters and things set forth therein are therefore admitted. The Trial Court correctly determined that, as a result of the admissions, there are no genuine issues of material fact remaining as to the defendants Barbara Jackson, Cleotha Lindsey and Greta Lindsey. Summary Judgment was therefore proper.

Trial Court erred in failing to award damages and attorney's fees against the defendants, Barbara Jackson, Cleotha Lindsey and Greta Lindsey. The plaintiffs' Request for Admissions included a request that the defendants admit that plaintiffs were entitled to an award of compensatory damages against Barbara Jackson in an amount not less than \$250,000.00, punitive damages in an amount not less than \$250,000.00 and attorney's fees. The Request for Admissions also included a request that the defendants admit plaintiffs were entitled to and award of compensatory damages against Cleotha Lindsey and Greta Lindsey in an amount not less than \$250,000.00 and punitive damages in an amount not less than \$250,000.00. In its Final Judgment the Trial Court refused to award plaintiffs any damages, attorney's fees or expenses from any of the defendants despite plaintiffs' entitlement to the same having been conclusively established by the admissions.

ARGUMENT

It is clear from the record that the defendants Barbara Jackson, Cleotha Lindsey and Greta Lindsey failed to serve written responses to the plaintiffs' First Request for Admissions within 30 days as required by MRCP Rule 36(a). As a result, each and every request set forth in plaintiffs' First Request for Admissions was conclusively established on the 31st day after service.

It is also clear from the record that the defendants Barbara Jackson, Cleotha Lindsey and Greta Lindsey failed to seek withdrawal or amendment of the admissions under MRCP 36(b) at any point. When a party has defaulted under Rule 36(a), the trial court and the requesting party should not have to wait indefinitely for the defaulting party to file a Rule 36(b) motion to withdraw the admissions. *Langley v. Miles*, 956 So.2d 970, 973 (Miss. Ct. App. 2006).

A trial court has the authority to rule that deemed admissions of a defaulting party are conclusively established when the defaulting party fails to file a Rule 36(b) motion to withdraw the admissions. The rule of law in Mississippi is that Rule 36 is to be enforced according to its terms. *DeBlanc v. Stancil*, 814 So. 2d 796, 800 (Miss. 2002), *Sawyer v. Hannan*, 556 So. 2d 696 (Miss. 1990) and *Educational Placement Servs. v. Wilson*, 487 So. 2d 1316 (Miss. 1986).

As a result of the defendants' failure to respond to plaintiffs' First Request for Admissions, the following matters and things are conclusively established in this case:

1. The defendant Barbara Jackson has no viable defense to the allegations set forth in the Complaint in this case.
2. The Chancery Court of Madison County has subject matter jurisdiction and is the proper venue for this action.
3. The plaintiffs, David J. Lowe, Sr. and Patricia A. Lowe, are the owners in fee simple of the following described real property, to wit:

A tract of land situated in the NE1/4 of the NE1/4 of Section 2, T7N-

R1E, Madison County, Mississippi, as per plat of survey for Louis Bennett by Reynold Engineering, Inc. dated May 15, 1967, as filed in the Madison County Chancery Clerk's Office and being part of Parcels 5 and 6 of said survey, being more particularly described as follows:

Commencing at the southeast corner of Lot 30 Ingleside Subdivision; thence South 89 degrees 52 minutes 53 seconds West along the south line of Lot 30 and said line extended for a distance of 692.94 feet to a point on the east line of said Parcel 5; thence South 00 degrees 22 minutes 10 seconds East along said line for a distance of 906.53 feet to the POINT OF BEGINNING; thence South 89 degrees 37 minutes 50 seconds West for a distance of 364.00 feet to the west line said Parcel 6; thence South 00 degrees 22 minutes 10 seconds East along said line for a distance of 401.45 feet; thence South 87 degrees 41 minutes 19 seconds East for a distance of 182.20 feet; thence south 88 degrees 13 minutes 46 seconds East for a distance of 182.13 feet to the East line of said Parcel 5; thence North 00 degrees 22 minutes 10 seconds West along said line for a distance of 416.82 feet to the POINT OF BEGINNING, containing 3.42 acres, more or less, and having a 40 foot ingress/egress easement strip on the west side and a 50 foot ingress/egress easement strip on the south side of said tract, all as shown on the attached plat marked R-980.

4. Plaintiffs' deraignment of title to the subject property, as set forth in Exhibit A to the Complaint in this action and which is attached hereto and incorporated herein, is a true and correct reflection of the state of title to the subject property.

5. The defendant Barbara Jackson did not obtain any title to the subject property whatsoever by virtue of any order or judgment entered by Bobby Delaughter, Hinds County Circuit Judge, in the matter styled *Barbara Jackson v. Cleotha Lindsey, Robert Blake, Bay City Mortgage and John Does 1-10*, being Civil Action No. 2002-7 in the Circuit Court of the Second Judicial District of Hinds County, Mississippi.

6. Plaintiffs obtained title to the subject property by virtue of a Warranty Deed from Cleotha Lindsey and Greta Lindsey to David J. Lowe, Sr. and Patricia A. Lowe in March of 2002 which was acknowledged on March 18, 2002, filed for record in the Madison County Chancery Clerk's office on March 21, 2002 and is recorded in Book 507 at Page 110.

7. On March 18, 2002 David J. Lowe, Sr. and Patricia A. Lowe executed a Deed of Trust in favor of First Magnus Financial

Corporation. That Deed of Trust was filed for record in the Madison County Chancery Clerk's office on March 21, 2002 and is recorded in Book 1397 at Page 506.

8. The Order Striking Defendants' Answers and Granting Final Judgment for Plaintiff in a matter styled *Barbara Jackson v. Cleotha Lindsey, Robert Blake, Bay City Mortgage and John Does 1-10*, being Civil Action No. 2002-7 in the Circuit Court of the Second Judicial District of Hinds County, Mississippi and entered by Bobby Delaughter, Hinds Count Circuit Judge on July 19, 2002 is void and should be set aside and held for naught by this Court.

9. The order entered in *Barbara Jackson v. Cleotha Lindsey, et al* on August 18, 2003 by Bobby Delaughter, Hinds Count Circuit Judge, purporting to set aside the July 19, 2002 final judgment "to the extent said order applied to defendant Cleotha Lindsey" is void and should be set aside and held for naught by this Court as a cloud on the title of David J. Lowe, Sr. and Patricia A. Lowe.

10. The Final Judgment entered on April 27, 2004 by Bobby Delaughter, Hinds Count Circuit Judge, in *Barbara Jackson v. Cleotha Lindsey, et al* purporting to vest title to the subject property in fee simple to Barbara Jackson is void and should be set aside and held for naught by this Court as a cloud on the title of David J. Lowe, Sr. and Patricia A. Lowe.

11. David J. Lowe, Sr. and Patricia A. Lowe were not made parties to *Barbara Jackson v. Cleotha Lindsey, et al*.

12. The Circuit Court of the Second Judicial District of Hinds County was not the proper venue and lacked personal jurisdiction over David J. Lowe, Sr. and Patricia A. Lowe as well as subject matter jurisdiction as to the subject property herein.

13. The judgments entered by the Circuit Court of the Second Judicial District of Hinds County purporting to divest plaintiffs of title to the subject property violate plaintiffs rights to due process under the Mississippi Constitution and the United States Constitution.

14. The aforesaid judgments in *Barbara Jackson v. Cleotha Lindsey, Robert Blake, Bay City Mortgage and John Does 1-10*, being Civil Action No. 2002-7 in the Circuit Court of the Second Judicial District of Hinds County, Mississippi and entered by Bobby Delaughter, Hinds Count Circuit Judge are all slanderous, void and of no effect and should be set aside and held for naught as to the subject property herein.

15. The Hinds County litigation aforesaid was maliciously instigated by Barbara Jackson with full knowledge that her claim of

title was false and with the intent to slander plaintiffs' title to the subject property.

16. The defendant Barbara Jackson knew, or should have known, that initiating the Hinds County action to deprive plaintiffs of title to the subject property would cause, and did cause, plaintiffs to experience extreme worry, mental anguish and distress.

17. Barbara Jackson's actions in initiating the Hinds County lawsuit were slanderous, intentional and calculated to cause, and did cause, plaintiffs to experience extreme worry, mental anguish and distress.

18. Barbara Jackson's actions in initiating the Hinds County lawsuit were grossly negligent and without regard to plaintiffs' rights when Barbara Jackson knew, or should have known, that the slanderous and false allegations made to the Hinds County Circuit Court regarding title to the subject property and plaintiffs' rights therein, would cause, and did cause, plaintiffs to experience extreme worry, mental anguish and distress.

19. The actions of Barbara Jackson have caused plaintiffs embarrassment, public humiliation, and public ridicule and have forced plaintiffs to obtain legal representation and have incurred other costs and expenses in an effort to protect their title to the subject property.

20. Plaintiffs are entitled to an award of compensatory damages from Barbara Jackson in an amount not less than \$250,000.00, an award of punitive damages from Barbara Jackson in an amount not less than \$250,000.00, together with attorney's fees and costs.

21. The defendants Cleotha Lindsey and Greta Lindsey breached the warranty set forth in the Warranty Deed from Cleotha Lindsey and Greta Lindsey to David J. Lowe, Sr. and Patricia A. Lowe which was filed for record in the Madison County Chancery Clerk's office on March 21, 2002 and is recorded in Book 507 at Page 110.

22. Cleotha Lindsey and Greta Lindsey breached the covenants of seisin and power to sell, quiet enjoyment and warranty of title.

23. Plaintiffs are entitled to an award of damages from Cleotha Lindsey and Greta Lindsey for breach of warranty in an amount not less than \$250,000.00, plus extra contractual damages in an amount not less than \$250,000.00.

The foregoing matters and things having been admitted by the failure of the defendants

Barbara Jackson, Cleotha Lindsey and Greta Lindsey to comply with MRCP 36, there are no genuine issues of material fact remaining with respect to the defendants. The learned Chancellor correctly followed the law and entered summary judgment against Barbara Jackson, Cleotha Lindsey and Greta Lindsey pursuant to MRCP 56.

The arguments put forth by Barbara Jackson in her brief are simply not relevant to the issues before the Court in this appeal. For the most part, the cases cited in Barbara Jackson's brief are not applicable to this situation with respect to the facts or the law. At this point, the reasons, legitimate or not, known or unknown, for the rather curious judgments entered by the Circuit Court of the Second Judicial District of Hinds County do not matter. Whether the Hinds County judgments were void is not an issue presented by this appeal. The issue is whether the Trial Court properly entered summary judgment against Barbara Jackson, Cleotha Lindsey and Greta Lindsey based on the admissions establish by the defendants' failure to comply with Rule 36 of the Mississippi Rules of Civil Procedure. The decisions of this Court leave no doubt that plaintiffs are entitled to summary judgment and that the Trial Court was correct in so finding.

While the Trial Court properly entered summary judgment against Barbara Jackson, Cleotha Lindsey and Greta Lindsey, it erred in failing to award damages or attorney's fees to the Lowes in the Final Judgment. The Lowes entitlement to damages and attorney's fees were conclusively established by the defendants' failure to comply with Rule 36 of the Mississippi Rules of Civil Procedure. The *DeBlanc* Court explained it all very clearly:

According to Mississippi Rule of Civil Procedure 36(a), a "matter is admitted unless, within thirty days after service of the request . . . the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney." Thus, a judge does not have

the discretion to deem the matter admitted, because a request is conclusively established upon a party's failure to answer within thirty days, or such time as the judge has determined appropriate. Miss. R. Civ. P. 36(b). The trial court, may, however, permit withdrawal or amendment of the admission. *Id.* Rule 36 is to be applied as written, but "it is not intended to be applied in Draconian fashion. If the Rule may sometimes seem harsh in its application, the harshness may be ameliorated by the trial court's power to grant amendments or withdrawals of admissions in proper circumstances." *DeBlanc v. Standi*, 814 So.2d 796, 801-02 (Miss. 2002).

Awarding damages and attorney's fees as set forth in plaintiffs' Request for Admissions was not discretionary in light of the defendants' failure to seek withdrawal or amendment of the admissions. Even after Barbara Jackson retained new counsel, none of the defendants moved the Court for leave to withdraw or amend the admissions.

The requested admissions regarding damages and attorney's fees are no different from any other requested admission. The duty to properly respond pursuant to M.R.C.P. 36 is the same. If Rule 36 truly "means what it says" the Trial Court was required to award the Lowes compensatory damages, punitive damages and reasonable attorney's fees pursuant to the defendants' admissions. *Educational Placement Servs. v. Wilson*, 487 So. 2d 1316 (Miss. 1986).

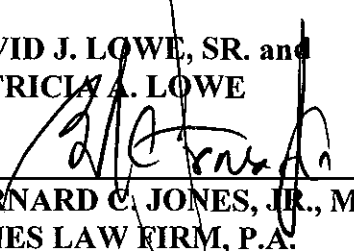
CONCLUSION

Too often litigation crawls along while wronged litigants continue to suffer. In this case, even before this lawsuit was filed, the Lowes were forced to live with uncertainty about the title to their home. After the complaint herein was filed, the mortgage payments went on. The tax payments went on. The headaches went on. The gossip went on. The humiliation went on. The worry went on. The Lowes did not create this situation. It was created by the defendants Barbara Jackson, Cleotha Lindsey and Greta Lindsey. It was unnecessary. The time has come to end it.

Under the rules and case law the Lowes are entitled to summary judgment and to an award of compensatory damages, punitive damages and attorney's fees. David J. Lowe, Sr. and Patricia A. Lowe respectfully urge the Court to affirm the Trial Court's determination that plaintiffs are entitled to summary judgment and to render and award to plaintiffs compensatory damages, punitive damages and attorney's fees consistent with the defendants' admissions.

Respectfully submitted,

**DAVID J. LOWE, SR. and
PATRICIA A. LOWE**

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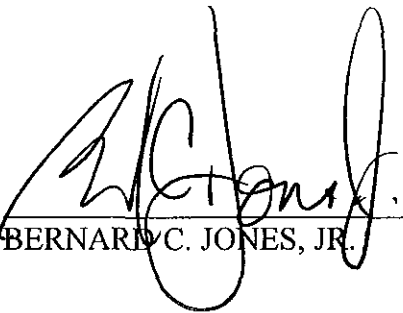
CERTIFICATE OF SERVICE

I, Bernard C. Jones, Jr., do hereby certify that I have this day caused the foregoing to be electronically transmitted and / or mailed, U.S. Mail, postage pre-paid, to the following:

The Honorable Cynthia Brewer
Madison County Chancery Judge
Post Office Box 404
Canton, MS 39046

Ms. Barbara Jackson
543 Yandell Road
Canton, MS 39046

October 29, 2010


BERNARD C. JONES, JR.