

**IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI**

**BARBARA JACKSON  
VS.  
DAVID J. LOWE, SR. AND  
PATRICIA A. LOWE**

**APPELLANT  
NO. 2010-CP-00062COA**

**APPELLEES**

**-AND-**

**DAVID J. LOWE, SR. and  
PATRICIA A. LOWE  
VS.  
BARBARA JACKSON,  
CLEOTHA LINDSEY AND  
GRETA LINDSEY**

**CROSS-APPELLANTS**

**CROSS-APPELLEES**

**CROSS- APPELLEE'S BRIEF**

**ATTORNEY FOR CROSS-APPELLEE**

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### **CERTIFICATE OF INTERESTED PERSONS**

Pursuant to M.R.A.P. 28(a)(1), the undersigned Counsel of Record certifies that the following persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal.

1. Cross-Appellee:

C. Brent Jones, Esquire, 333 west Porter Street, Ridgeland, Mississippi 39157

2. Cross-Appellant:

Bernard C. Jones, Jr., Esquire, Post Office Box 11325, Jackson, Mississippi 39283-1325

3. Honorable Cynthia Brewer, Chancery Court Judge, Post Office Box 404, Canton, Mississippi 39046.

4. David J. Lowe and Patricia A. Lowe, Cross-Appellants

5. Cleotha Lindsey and Greta Lindsey, Cross-Appellees

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## **STATEMENT OF 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 FEES AGAINST THE DEFENDANTS, CLEOTHA LINDSEY AND GRETA LINDSEY.

## **STATEMENT OF THE CASE**

### **A. COURT PROCEEDINGS AND DISPOSITION IN COURT BELOW**

On March 5, 2009, Cross-Appellants, David J. Lowe, Jr. and Patricia A. Lowe filed a Motion for Summary Judgment. (RE 1-12) Cross-Appellants presented and were heard on their Motion for Summary Judgment on the 22<sup>nd</sup> day of May, 2009. An Order granting Summary Judgment was prepared and presented by counsel for the Cross-Appellants on June 1, 2009, which provided among other things including a finding by the Court that Cross-Appellee participated in discovery and admitted the Lowe's were the owners of the subject property. The Court went on further to find that Barbara Jackson wholly failed to respond to the request for admissions.(RE 13-14).

### **B. STATEMENT OF THE FACTS**

While there was no genuine dispute as to the material facts in this case a brief overview is essential to the complete understanding of the issue in this case. In 2001 the Lindseys purchased the property which is the subject of the underlying litigation at a tax foreclosure sale. The property was subsequently sold by the Lindseys to the Lowes in March of 2002. On September 11, 2008 the Lowe's filed Complaint to remove cloud on title. (RE 15-26). Specifically the Lowe's complaint sought a judicial determination of a fee simple ownership interest by the Lowes of the underlying parcel of property and damages against Appellant, Barbara Jackson. In Paragraph number sixteen of the Complaint, the Lowes allege alternatively, and only in the alternative if the Court determined that the Lowes were not the fee simple owners of the property at issue, then an award of damages was sought by the Lowes against Cleotha Lindsey and Greta Lindsey. (RE 20). Thus it only stands to reason that when the lower court enter its' order vesting fee simple title of the subject property with the Lowes, the court then

properly never was necessitated in reaching the issue of damages against the Lindseys.

Notwithstanding the very language of the pleadings, at a hearing on the issue of Summary Judgment the Lindseys readily admitted that the Lowes were the rightful owners of the subject property and the Court found that the Lindseys, much unlike Barbara Jackson had participated in the discovery process and entered an order awarding Summary Judgment in favor of the Lowes.

Finally the court on December 11, 2009 entered its' Final Judgment which among other things adjudicated the Lowes the fee simple owners of the subject property. The court went on further to aver that no monetary awards were to be assessed against the Lindseys. (RE 27 - 33)

### **SUMMARY OF THE ARGUMENT**

The court in the instant case correctly held that the Lowes were entitled to Summary Judgment as to the ownership in fee simple of the subject property, an issue which was never readily disputed by the Lindseys. The court further was further well within its' discretion in precluding an award of damages against the Lindseys wherein damages were only sought against the Lindseys in the alternative event that the fee simple title of the subject property was not adjudicated to be vested in the Lowes. To take the issue a step further, and in contradiction of their own pleadings, the Lowes assert that all parties failed to cooperate in discovery and pursuant to Rule 36 an award of damages must be ordered, but no such finding was ever made by the court as against the Lindseys. (RE ).

Therefore, the Cross appeal on the issue of an errant non award of damages against the Lindseys is simply misplaced and should be summarily dismissed.



## ARGUMENT

An appeal from a chancery court's decision is given a limited standard of review, using an abuse-of-discretion standard. *Deliman v. Thomas*, 16 So.3d 721, 724 (Miss. Ct. App. 2009) (citing *Miller v. Pannell*, 815 So.2d 1117 (Miss. 2002)). "The Court will not disturb a chancellor's findings unless they are manifestly wrong or clearly erroneous or the court has applied an incorrect legal standard." *Id.* (citing *In re Estate of Ladner v. Ladner*, 909 So.2d 1051, 1054 (¶6) (Miss. 2004)). Issues of law are reviewed de novo. *Id.*

The issues before the Court are the correctness of the lower courts grant of summary judgment and the lack of an award of damages against the Lindseys. As to both issue before the court, your Cross-Appellees would assert that the lower court was correct on both issues in its' Final Judgment.

Cross-Appellant's assert that they are entitled to an award of damages against the Lindseys for alleged violations of Rule 36. However, the record is clearly devoid of any adjudication of a failure by the Lindseys to cooperate with any aspect of the discovery process. In fact and quite to the contrary, the Order granting Summary Judgment which was prepared and presented to the court by counsel for the Cross-Appellant's specifically states and the court held that the Lindseys participated in discovery with the Lowes and admitted that the Lowes were the owners of the subject property. Further, the Order adjudicates that "Barbara Jackson wholly failed to respond to the request for admissions." (RE ). Thus any allegation of an award of damages against the Lindseys for a failure to answer admissions is contrary to the record before the Court and as such should be dismissed and should be considered independent of

any purported award of damages against, Appellant, Barbara Jackson.

Notwithstanding the afore provisions, Cross-Appellant craftily neglects to address the underlying conflict that is created by their appellate request for damages against the Lindseys. In the case sub judice, the Lowes filed a complaint to quiet title to a parcel of property which in paragraphs one through fifteen sought fee simple ownership of the subject property and damages assessed against Cross-Appellee, Jackson. Interestingly, paragraph sixteen states “in the alternative, and only in the event that the Court determines that Plaintiffs are not the owners in fee simple of the subject property therein, then plaintiffs aver that the defendants, Cleotha Lindsey and Great Lindsey breached the warranty..... are entitled to an award of damages from Cleotha Lindsey and Greta Lindsey for breach of warranty in an amount not less than...” (RE ). Thus your Cross-Appellants, despite their own pleadings, want the best of both worlds, that is to be the fee simple owners of the subject property and also to have damages assessed against the Lindseys in complete contradiction to their own prayer for relief from the court.

Paragraphs sixteen through nineteen of the Lowes complaint were independently plead in the alternative so as to only seek damages from the Lindseys in the event the court elected not to award them the fee simple ownership of the subject property to the Lowes. Thus, since the happening of the event precedent, ownership being definitively determined by the court, any further redress for monetary damages against the Lindseys is contrary to law, common sense or the canons of equity and as such Cross-Appellant’s assertion of error by the lower court against the Lindseys for monetary damages should be dismissed.

### CONCLUSION

It is clear from the record that the lower court was correct in granting an award of summary judgment in favor of the Lowes, a matter which was never disputed by the Lindseys. The Court was further within its' sound discretion in holding that the Lowes were not entitled to an award of damages against the Lindseys for the reasons enumerated herein and the Cross-Appeal filed by the Lowes against the Lindseys should be dismissed herein.

Respectfully submitted this the 4th day of January, 2011.

CLEOTHA LINDSEY AND GRETA LINDSEY

BY:   
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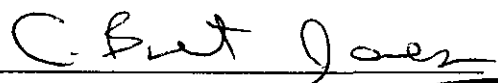

CERTIFICATE OF SERVICE

I, C Brent Jones, attorney of record for the Cross-Appellee, do hereby certify that I have this day caused to be mailed, via United States Mail, postage prepaid, a true and correct copy of the above and foregoing instrument in writing to the following:

Bernard C. Jones, Jr., Esquire  
Post Office Box 11325  
Jackson, Mississippi 39283-1325

Honorable Cynthia Brewer  
Chancery Court Judge  
Post Office Box 404  
Canton, Mississippi 39046.

So certified, this the 4th day of January, 2011.

  
C. BRENT JONES, (MSB# )