

2011-CA-00132

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

No.: 2011-CA-00132

**CHARLES BENSON, AS HEIR
TO THE ESTATE OF JOHN S. BENSON**

APPELLANT

V.

**NESHOPA COUNTY SCHOOL DISTRICT
AND DELBERT HOSEMAN, SECRETARY
OF STATE FOR THE STATE OF MISSISSIPPI**

APPELLEES

**BENSON APPELLANT'S PRINCIPAL BRIEF
(ORAL ARGUMENT NOT REQUESTED)**

**APPEAL FROM THE CHANCERY COURT FOR THE SIXTH JUDICIAL
DISTRICT OF NESHOPA COUNTY, MISSISSIPPI**

**CALEB E. MAY (MSB# [REDACTED])
Caleb E. May, Attorney At Law PLLC
422 Center Avenue
P.O. Box 388
Philadelphia, Mississippi 39350
(601) 656-4830**

Counsel for Appellant

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CERTIFICATE OF INTERESTED PARTIES

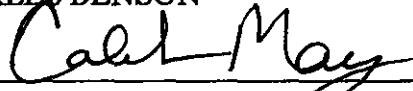
The undersigned counsel of record to the Appellant certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order for the Justices of the Supreme Court and/or the Judges of the Court of Appeals to evaluate possible disqualification or recusal.

1. The Appellees, the Neshoba County School District and Delbert Hosemann, Secretary of State for the State of Mississippi
2. The Appellant, Charles Benson and his counsel, Caleb E. May.
3. Appellees' counsel, Honorable Robert L. Thomas, Attorney for Neshoba County School District, Honorable L. Christopher Lomax, Honorable Nancy Morse Parkes, and William G Cheney, Jr., Attorneys' for Delbert Hoseman, the Secretary of State.
4. Honorable Edward C. Fenwick, Chancery Court Judge of the Sixth Judicial District.
5. Heirs of John S. Benson: Vickie Chaneyworth of Frankston, Texas, Rayburn A. Benson of Philadelphia, Mississippi, Marie Branning of Philadelphia, Mississippi, John Benson, Jr. of Philadelphia, Mississippi, Larue Benson of Jackson,

Mississippi, Sheila Nobles of Sumrall, Mississippi, and Linda Black of Decatur, Alabama.

Respectfully Submitted this the 21st day of July, 2011.

CHARLES BENSON



BY: **CALEB E. MAY** Attorney for the Appellant

CALEB E. MAY (MSB#102593)
Caleb E. May, Attorney At Law PLLC
422 Center Avenue
P.O. Box 388
Philadelphia, Mississippi 39350
(601) 656-4830

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<i>Miss. Code Ann. §29-3-65</i>	1, 4, 5, 11, 12, 14

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STATEMENT OF THE ISSUES

This appeal of the Trial Judge's decision to grant the Defendants/Appellees' Motion to Dismiss involves the following issues on appeal:

1. Does the Neshoba County Chancery Court have jurisdiction through an objection to reclassification to enforce the Mississippi Sixteenth Section Statute, *Miss. Code Ann* Section 29-3-39, which requires a one year notice to sixteenth section Leaseholders before reclassification by a school board?
2. Does the Neshoba County Chancery Court have jurisdiction to conduct a hearing to determine the appropriate classification of Sixteenth Section land as defined by the Mississippi Sixteenth Section Statute, *Miss. Code Ann* Section 29-3-33 even if such reclassification does not maximize revenue for the Neshoba County School District?
3. Does the Neshoba County Chancery Court have jurisdiction through an objection to reclassification to enforce the Mississippi Sixteenth Section Statutes, *Miss. Code Ann* Sections 29-3-63(2) and 29-3-65, which provide that, before reclassification and renewal of leases, the Neshoba County School District shall hire a competent appraiser to determine fair market rental value of sixteenth section land?
4. Does the Neshoba County Chancery Court have jurisdiction through an objection to reclassification to conduct a hearing on the fair market rental value of sixteenth

section land based on an appraisal of the fair market rental value of sixteenth section land?

STATEMENT OF THE CASE

I. Course of the Proceedings

The Neshoba County School District posted in the Neshoba County Democrat a notice of reclassification of the Sixteenth Section land in Neshoba County that had been leased to John S. Benson. (See Court Record pg. 16) In response to this notice of reclassification, Plaintiff/Appellant, Charles Benson, as heir to John S. Benson and holder of a right to re-lease as provided in *Miss. Code Ann.* § 29-3-53, filed on April 6, 2010 his Objection to Reclassification of Sixteenth Section Land and For Determination of Lease in the Chancery Court of Neshoba County. On the 26th and 27th days of May 2010 the Defendants/Appellees, Neshoba County School District and the Secretary of State, filed their Motions to Dismiss and a Memorandum in Support of these Motions to Dismiss. Charles Benson filed his Response to the Motion to Dismiss on June 11, 2010, which was followed by the Secretary of State filing, on June 25, 2010, a Rebuttal of the Secretary of State to Charles Benson's Response to the Secretary of State's Motion to Dismiss. (Ct. Rec. pg. 1-46) The Chancery Court of Neshoba County, Honorable Edward C. Fenwick presiding, set the Motion to Dismiss for hearing, and the Trial Judge heard the Motion on December 8, 2010. (Ct. Rec pg. 47-50) The Trial Judge, after hearing testimony and reviewing the pleadings, granted the Motion to Dismiss, and the Order granting the Motion was filed on January 6, 2011. The Trial Judge specifically ruled in his order that "any objection to reclassification may only seek to show that the final classification determined by the Neshoba County School Board is not the highest and

best use of the land that would maximize value received by the school children of Neshoba County. (Ct. Rec. pg. 48-50) Charles Benson, by and through his Attorney, appealed the Trial Judge's ruling to the Supreme Court of Mississippi. (Ct. Rec. pg. 51)

II. Facts

John S. Benson, natural father of the Plaintiff/Appellant, Charles Benson, executed a lease with the Neshoba County School District for Sixteenth Section land in Neshoba County which was classified farm-residential land as defined under *Miss. Code Ann.* § 29-3-33. The subject Sixteenth Section lease was entered March 4, 1984 and leased, to John Benson for a period of twenty-five (25) years at the annual rent of five dollars (\$5.00) per acre per year, the following described property:

W 1/2 of NW 1/4 Less 3 acres for the Church and Less all public road right-of-way, being 71 acres, Section 16, Township 11, Range 11, Neshoba County, Mississippi.

This description can be found on that certain Correction Instrument For Sixteenth Section Lease Contract recorded in Deed Book A168 at Page 530 in the Neshoba County Land Records which corrected the subject lease that was recorded in the Neshoba County Land Records in Deed Book A147 at Page 606. (Ct. Rec. pg. 6 and See Trial Transcript pg. 7) Before the 1984 lease, John S. Benson and his family had held and lived on the subject property for over 60 years. (Tr. p. 13) The 1984 lease expired March 4, 2009, but John S. Benson died before the expiration of the lease. (Tr. p. 14) The rights to the Sixteenth Section land transferred to the John Benson's heirs-at-law as provided in *Miss. Code Ann.* § 29-3-53.

During the Trial Court's hearing in this matter, Charles Benson testified that his father passed away in 1991, and since that time he and his siblings have enjoyed use of

the subject property although none of the siblings have a residence there. The Benson siblings grow food, hunt, ride horses, and stay in the house on the property from time to time. Charles Benson further testified that the siblings hold much sentimental value in the property as it was their home for many years. (Tr. p. 14)

Before the expiration of the 1984 lease, Charles Benson, on behalf of all heirs to John S. Benson, made efforts to re-lease the above described property. (Tr. p. 14) The Neshoba County School District and the Secretary of State did not hire an independent appraiser to obtain a fair market rental value of the subject property within one year of the expiration of the lease as required under *Miss. Code Ann.* §§ 29-3-65 and 29-3-63. Neither did the School District or the Secretary of State attempt to reclassify the subject property within one year of the expiration of the lease as required under *Miss. Code Ann.* § 29-3-39. The Neshoba County School District and the Secretary of State stated in defense of their failure to perform these requirements was a “procedural mishap” that should be ignored as long as they are maximizing revenue. (Ct. Rec. pg. 19, 21)

After negotiations to re-lease failed, the School District published their Notice of Intent to Reclassify. In this Notice, the School District stated their intent to change the classification of the subject property from farm-residential to forest lands. (Ct. Rec. pg. 3)

SUMMARY OF THE ARGUMENT

The Chancery Court of Neshoba County should have barred reclassification of the subject property because neither the Neshoba County School District nor the Secretary

of State sought reclassification within one (1) year prior to the expiration date of the subject lease as required by *Miss. Code Ann.* § 29-3-39.

Should the Appellate Court find that the Neshoba Chancery Court does not have jurisdiction to hear and rule on the violation of *Miss. Code Ann.* § 29-3-39, the Appellate Court should find, alternatively, that the Trial Judge has been given authority to “either confirm or modify the classification as the circumstances shall demand.” *Miss. Code Ann.* § 29-3-37; and under this authority and jurisdiction the Trial Judge should have determined which classification best fits the Benson Property under the definitions provided in *Miss. Code Ann.* § 29-3-33. In determining this “best fit” the Trial Court should have taken into consideration the current and recent use of the property, the prior lease holders’ improvements and buildings on the property, and the prior lease holders’ right to re-lease the land. Because the Benson Property was most recently used as recreational land by the leaseholders (recreational land being defined as: “land most suitable for uses which provide for activities or services of a recreational nature”) the Trial Judge should have found that the land was best suited under a Recreational classification.

The Trial Judge should have also found jurisdiction to order the Neshoba County School District to hire competent appraiser to determine fair market rental value of sixteenth section land under *Miss. Code Ann.* § 29-3-65 which states that “one (1) year prior to the date, when any such lands, not subject to competitive bid procedures, shall become available for lease, the board of education shall appoint a competent appraiser to appraise the land and report to the board his recommendation for the fair market rental amount.” After enforcing the requirement of *Miss. Code Ann.* § 29-3-65, the Trial Court should have found jurisdiction to conduct a hearing on determining the fair

market rental value based on the ordered appraisal with such hearing to ensure that the appraisal was based upon proper standards of appraising the rental value of sixteenth section land. In making this determination, the Trial Court should have also looked to *Miss. Code Ann. § 29-3-63* which states:

“The board of education shall not lease or extend a lease on land classified as industrial or commercial at an annual rental less than five percent (5%) of the current market value, exclusive of buildings or improvements not owned by the school district. Such minimum acceptable percentage shall not apply to land classified as farm-residential, residential, recreational and other land; however, fair market rental will apply to those lands as determined by appraisal, comparative analysis or comparison with the private sector.”

I. STANDARD OF REVIEW

This Court has clearly held that it “reviews errors of law, which include summary judgments and motions to dismiss, de novo.” *City of Jackson v. Perry*, 764 So.2d 373, 376 (Miss. 2000). *See also Miss. Dep’t of Wildlife, Fisheries & Parks v. Miss. Wildlife Enforcement Officers’ Ass’n, Inc.*, 740 So.2d 925, 929-30 (Miss. 1999) (reiterating de novo review of chancellor’s summary judgment).

Accordingly, this Honorable Court will be reviewing under a de novo standard because the issues originally presented to the Trial Judge were not heard on the merits but were dismissed for lack of jurisdiction.

II. DID THE TRIAL COURT ERR IN GRANTING THE DEFENDANTS'/APPELLEES' MOTION TO DISMISS BECAUSE THE TRIAL COURT DOES HAVE JURISDICTION OVER THE SUBJECT MATTER OF ENFORCING THE PROVISIONS OF THE MISSISSIPPI SIXTEENTH SECTION STATUTE, MISS. CODE ANN. SECTIONS 29-3-39, WHICH REQUIRES ONE YEAR NOTICE TO SIXTEENTH SECTION LEASEHOLDERS BEFORE RECLASSIFICATION BY THE SCHOOL BOARD?

The Neshoba County School District neglected their duties to ensure that they met the requirements of *Miss. Code Ann.* § 29-3-39 which requires the following:

“[A]ll sixteenth section land shall be classified, or reclassified as is necessary, within one (1) year prior to the expiration date of any existing lease, and within sixty (60) days of the terminating of any lease of sixteenth section land by final court order.

“It shall be the duty of the board of education to survey periodically the classification of all sixteenth section land under its jurisdiction and to reclassify said land as it may deem advisable because of changes of conditions.”

Their failure to perform the reclassification and other statutory duties resulted in the present litigation.

The Neshoba County School District should have performed their reclassification prior to the expiration of the Benson lease in March of 2009. In addition the Neshoba County School District should have granted an extension of the existing Benson Lease at its present classification and rent payments until they could meet the procedures required under the statutes for reclassification and determination of fair market rental value.

Nevertheless, the Trial Judge should have made a decision on whether the Neshoba County School District had proposed the correct classification for the Benson Property.

III. DOES THE NESHOPA COUNTY CHANCERY COURT HAVE JURISDICTION TO CONDUCT A HEARING TO DETERMINE THE APPROPRIATE CLASSIFICATION OF SIXTEENTH SECTION LAND UNDER THE DEFINITIONS OF CLASSIFICATIONS OF THE MISSISSIPPI SIXTEENTH SECTION STATUTE, MISS. CODE ANN. SECTION 29-3-33, EVEN IF SUCH RECLASSIFICATION DOES NOT MAXIMIZE REVENUE FOR THE NESHOPA COUNTY SCHOOL DISTRICT?

The Neshoba County School District proposed "forest land" as the appropriate "reclassification" for the Benson Property. (Ct. Rec. pg. 3) "Forest Land" is defined under *Miss. Code Ann.* § 29-3-33(a) which provides:

"Forest land" shall mean all land at least ninety percent (90%) of the total area of which is at present forest or wasteland, or land which will produce a maximum of revenue by utilization to produce timber or other forest products, shall be classified as forest land. The unit of measurement to be used in arriving at the classification of forest land shall be the smallest division of the government survey covering said lands in counties where such government survey has been made, and in other counties shall be forty (40) acres."

In granting the Motion to Dismiss for lack of jurisdiction the Trial Judge held that "any objection to reclassification may only seek to show that the final classification determined by the Neshoba County School Board is not the highest and best use of the land *that would maximize value received by the school children of Neshoba County.*" (Ct. Rec. pg. 49-50, *emphasis added*) Based on such language, the Trial Judge

essentially ruled that the definitions provided in *Miss. Code Ann.* § 29-3-33 can be routinely ignored as long as a classification maximizes revenue. Such a usurpation of clearly worded legislation should not be allowed.

Under a maximization of revenue standard like the one handed down by the Trial Judge, School Boards could reclassify and renegotiate valid leases whenever a better offer came along. The classifications and procedures for classifying land and setting fair market rental value that are set out in Mississippi's Sixteenth Section Statutes tell a different story than that of simply being able to win on a maximization of revenue argument. For example, *Miss. Code Ann.* § 29-3-33 states:

"For the purpose of determining the proper category for such lands and the oil, gas and other minerals in, on and under such lands, the following definitions shall be *controlling* unless the context clearly indicates otherwise"

(Emphasis Added)

There would be no need for the word "controlling" if a School Board or the Secretary of State can defeat an objection to reclassification by merely arguing that their proposed classification maximized revenue as opposed to the property meeting the definition of their proposed classification.

"It shall be the duty of the board of education to survey periodically the classification of all sixteenth section land under its jurisdiction and to reclassify said land as it may deem advisable because of *changes of conditions*." *Miss. Code Ann.* § 29-3-39 (*emphasis added*) Charles Benson admits that there are no permanent residents on the Benson property and, therefore, conditions have changed requiring a change of classification. At the Trial Court hearing, Charles Benson testified that the Benson

Property was fifty percent wooded and fifty percent fields. The Neshoba County School District and the Secretary of State attached to their Motion to Dismiss two affidavits of persons who were not present at the hearing of the Motion to Dismiss and therefore not accepted by the Trial Court as competent appraisers of the fair market rental value of Sixteenth Section land. (Ct. Rec. pg. 31-35) Other than those affidavits, the Neshoba County School District and the Secretary of State failed to present any proof that the land met the definition of their proposed classification.

Before filing the reclassification, the Neshoba County School District should have looked at the property and then to the definitions of the classifications, as the definitions are *controlling* pursuant to *Miss. Code Ann. § 29-3-33*, and if they did not feel qualified to make a determination then they should have hired an independent professional to make the call. Instead, the School District erroneously labeled the property "forest land" and later at the hearing of the Motion to Dismiss, Charles Benson testified that it was not. With Mr. Benson's testimony the only real evidence of under scrutiny at the hearing, the Trial Judge should have required the Neshoba County School District and the Secretary of State to present witnesses as to how the conditions of the Benson property met the definition of forest land. After such hearing on the conditions of the land the Trial Judge should have determined which classification best fit the Benson Property.

IV. DOES THE NESHOPA COUNTY CHANCERY COURT HAVE JURISDICTION THROUGH AN OBJECTION TO RECLASSIFICATION TO ENFORCE THE MISSISSIPPI SIXTEENTH SECTION STATUTES, MISS. CODE ANN. SECTIONS 29-3-63(2) AND 29-3-65, WHICH PROVIDE THAT, BEFORE RECLASSIFICATION AND RENEWAL OF LEASES, THE NESHOPA COUNTY SCHOOL DISTRICT SHALL HIRE A COMPETENT APPRAISER TO DETERMINE FAIR MARKET RENTAL VALUE OF SIXTEENTH SECTION LAND?

The Trial Judge should have determined the correct classification and then ordered the Neshoba County School District to hire a competent appraiser to determine the fair market rental value of the Benson Property. At the Motion to Dismiss hearing, the Neshoba County School District and the Secretary of State continually reiterated their duty to maximize revenue for the school children. (Tr. pg. 7, 8, 25, 32, 34) Charles Benson agrees with such duty of the school board but does argue that revenue is not on its way to maximization until that revenue is appropriately determined. Further, the Mississippi Sixteenth Section Statutes provide guidelines and limits on how to achieve maximization of revenue through the land classification statutes, as argued in the preceding sections of this brief, and requirement of appraisals.

The Benson family had been paying rent on the Benson Property for the term of the lease. Regardless of the classification, the Benson family has the right to re-lease the property and match the highest bid of received for the property. *Tucker v. Prisock*, 791 So.2d 190, 193 (Miss. 2001) (if it shall have made an offer, [the most recent holder] *shall have the final right to extend its lease for the term advertised at the annual rental equal to said highest offer* received by the Board of Education." (emphasis added)); *Hill v. Thompson*, 564 So.2d 1, 12 (Miss. 1989) (Equity dictates, however, that while the appraisal process is in process that appellee shall have the use of the premises in question and the right of first refusal of the new lease and the right to meet the best bid

when the rental value is determined.) Before any bidding process on the Benson Property can take place and before the school board can accurately determine what rent it can charge, they must have an appraisal of the fair market rental value of the Benson Property. *Miss. Code Ann.* §§ 29-3-63(2) and 29-3-65.

In *Hill v. Thompson*, the Supreme Court of Mississippi required that fair market rental value of sixteenth section property be determined by a competent appraiser. *Hill*, at 12. *Miss. Code Ann.* § 29-3-63(2) states: “fair market rental will apply to those lands as determined by appraisal, comparative analysis or comparison with the private sector.” *Miss. Code Ann.* § 29-3-65 states: “One (1) year prior to the date, when any such lands, not subject to competitive bid procedures, shall become available for lease, the board of education shall appoint a competent appraiser to appraise the land and report to the board his recommendation for the fair market rental amount.” Based on the law, the Neshoba County School District was required to conduct an appraisal of the Benson Property. The Neshoba County School District never presented any proof that they had a competent appraiser conduct an appraisal on the Benson Property because they never paid for such appraisal to be performed. The Trial Judge should have ordered an appraisal and had review of that appraiser’s competency. Further, the cost of such appraisal and all costs of enforcing the required duties of the Neshoba County School District should be borne by them.

V. DOES THE NESHOPA COUNTY CHANCERY COURT HAVE JURISDICTION THROUGH AN OBJECTION TO RECLASSIFICATION TO CONDUCT A HEARING ON THE FAIR MARKET RENTAL VALUE OF SIXTEENTH SECTION LAND BASED ON AN APPRAISAL OF THE FAIR MARKET RENTAL VALUE OF SIXTEENTH SECTION LAND?

After determination of the correct classification and ordering the Neshoba County School District to hire a competent appraiser for the Benson Property, the Trial Judge should have found authority to hold a subsequent hearing to determine whether the appraiser chosen was competent and had actually found the fair market rental value of the Benson Property.

The Supreme Court took up the issue of appraisals in *Broadhead v. Bonita Lakes Mall, Ltd. Partnership*, 702 So.2d 92, 97 (Miss. 1997) reiterating that the appraiser be competent and also used the Uniform Standards of Professional Appraisal Practice to help determine competency. The Court found that the Chancery Court had not committed manifest error in determining competency, thus further reinforcing the jurisdiction of the Chancery Court in determining fair market rental value of sixteenth section land.

With such jurisdiction being established, it was within the realm of the Trial Judge's power to determine fair market value after determining the correct classification under definitions of *Miss. Code Ann.* § 29-3-33.

CONCLUSION

The Trial Judge misjudged his cumulative authority under sixteenth section laws. *Miss. Code Ann.* §§ 29-3-37 and 29-3-39 gave the Trial Judge (Chancery Court) jurisdiction to determine the correct classification of the Benson Property under the

definitions of *Miss. Code Ann.* § 29-3-33. Those definitions are controlling and there should have been a full hearing as to which definition best describes the conditions of the Benson Property. To avoid further suits being filed, the Trial Judge should have found the authority to order that the Neshoba County School District hire a competent appraiser as required under *Miss. Code Ann.* §§ 29-3-63(2) and 29-3-65. Such case could have been held open until that time that the required appraisal was returned and determined by the Trial Judge to be the fair market rental value of the Benson Property as appraised by a competent appraiser.

Because the Neshoba County School Board failed to meet their statutory requirements within the time limits imposed and further failed to altogether prove that they had meet any of the requirements of reclassification and appraisal of the Benson Property, the Neshoba County School District and the Secretary of State should bear all costs and attorney's fees for the trial and appeal of this case including those costs and attorney's fees of Charles Benson. Such payment of fees and costs is further supported by *Miss. Code Ann.* § 29-3-33 which states that the cost of reclassification shall be "paid from any available sixteenth section school funds or other school funds of the district.

Accordingly, Charles Benson requests this Honorable Court to overturn the decision of the Neshoba County Chancery Court in granting the Motion to Dismiss, to remand the case to the trial court in order that the Trial Court may determine classification, order appraisal, and determine fair market rental value., and finally Charles Benson requests that this Honorable Court render that the Neshoba County School District is to pay all costs and attorney's fees borne by Charles Benson in pursuing this case and appeal.

RESPECTFULLY submitted, this the 21st day of July, 2011.

CHARLES BENSON

BY:

Caleb May
CALEB E. MAY, APPELLANT'S ATTORNEY

CALEB E. MAY (MSB# [REDACTED])
Caleb E. May, Attorney At Law PLLC
422 Center Avenue
P.O. Box 388
Philadelphia, Mississippi 39350
(601) 656-4830

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the *Benosn Appellant's Principal brief* has been forwarded via first class mail to the following persons:

Appellees' Counsel

Honorable Robert L. Thomas
P.O. Box 96
Philadelphia, MS 39350

Honorable L. Christopher Lomax
Honorable Nancy Morse Parkes
P.O. Box 220
Jackson, MS 39205

Trial Judge

Honorable Edward C. Fenwick
230 W. Washington
Kosciusko, MS 39090

Respectfully Submitted this the 21st day of July, 2011.



CALEB E. MAY