IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

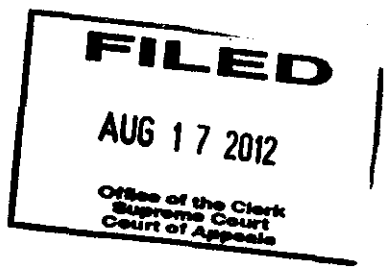
JULIA POWELL a/k/a JULIA ANN POWELL — **APPELLANT**

v. — **No. 2011-CA-00516-COA**

BENNIE JAKE EVANS and MARY MARGARET GREGORY — **APPELLEES**

SUPPLEMENTAL BRIEF OF APPELLEE MARY MARGARET GREGORY

ON APPEAL FROM THE
CHANCERY COURT OF JASPER COUNTY
No. 2008-2003



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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Miss. R. App. P. 28(a)(1), 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 the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Julia Powell, *Appellant*
2. The Honorable H. David Clark, II, *Jasper County Chancery Court*
3. Bennie Jake Evans, *Appellee*
4. Mary Margaret Gregory, *Appellee*
5. Terry L. Caves and Jerry D. Sharp, *Trial Counsel for Appellant*
6. Andrew S. Cardwell & David Neil McCarty, *Attorneys for Appellee*
7. David M. Ratcliff, *Counsel for Appellee Bennie Jake Evans*

So CERTIFIED, this the 17th day of August, 2012.

Respectfully submitted,

David Neil McCarty
Miss. Bar N[redacted]
Attorney for Appellee

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Statement of the Issues

This appeal presents three main issues:

I. The Court Has Jurisdiction over the Location of the 2.02 Acres.

II. Equity Allows the Trial Court to Reform Deeds.

III. The Alleged Titleholder of the 2.02 Acres Is Bound by the Order.

Statement of the Case

This case is about a piece of property owned by three siblings. They sought to divide the property amongst themselves, and reached an agreement to do so. However, after a surveyor examined the property, the siblings realized the earlier agreement could not be upheld. The trial court acted in equity to divide the property according to the intent of the parties.

As a part of that division, the trial court necessarily reformed the deed to a piece of land contained within the disputed property. The trial court did not partition the property or burden or change its borders in any way, but merely corrected and perfected the definition of the land's location in accord with expert testimony and the expressed intent of the parties.

Statement Regarding Oral Argument

In its Order of July 18, 2012, the Court held that "[u]pon completion of the filing of the briefs this matter will be set for oral argument." The Appellee Mary Margaret Gregory welcomes oral argument as an opportunity to clarify the just and equitable ruling of the trial.

Relevant Facts and Procedural History

The facts and procedural posture of this case are undisputed, but there are important details.

This case arose as a simple attempt to partition about 40 acres between three siblings. R. 6. Julia Powell, Mary Margaret Gregory, and Bennie Jake Evans were all tenants in common of a chunk of land in Jasper County. R. 6. They were the three heirs of Beatrice Evans, their

mother. Tr. 19. The siblings were fine with leaving their interests in the minerals under the land undivided, but wanted to section off the surface property for their own use. R. 6.

One of the reasons the partition was needed was because the Plaintiffs, Julia and Mary Margaret, needed access to roads. R. 6-7. Julia and Mary Margaret asked the Chancery Court to maintain the actual ownership levels—about 75% for Bennie, and 12.5% for each of them—while partitioning the property in an equitable fashion. R. 8-9.

In her Complaint, Julia noted that she wanted the property divided "LESS AND EXCEPT" a parcel of land totaling about "2.02 acres, more or less." R. 1. This property had already been in her possession, and at that time was not contemplated as part of the lawsuit. However, the Complaint did set out the description of the 2.02, or "Two Acres," as being smack dab in the middle of the land, like a puzzle piece. R. 6.

After relatively peaceful litigation (if there is such a thing) including a new survey of the property, the Chancery Court divided the land. R. 29. Indeed, the brother and sisters reached an Agreed Order to divide their land. R. 29.[1] The trial court found that the family thought they had about 38 acres before (not counting the Two Acres), but that the new survey determined there were actually 49.54 acres in total, less the 2.02, for 47.52 that required partitioning. R. 30.

In accord with the request of the parties, and indeed with their agreement, the trial court then carved the property into 12.5% for each of the sisters, or 5.94 acres, leaving their brother 75%, or 35.64 acres. R. 30. In the Agreed Order, the trial court further taxed Julia with paying more costs for the survey, since her Two Acre puzzle piece was surveyed along with the rest of the property. R. 30-31, 32. The trial court handwrote in that the Agreed Order would be "a final Judgment," and it was entered on February 19, 2009. R. 34.

[1] While the "Agreed" in "Agreed Order" is scratched out on the first page of the Order, it is clear from the signature page that all parties individually agreed and the Order was signed by them and their counsel. R. 34.

This was not the end of the story. A little less than a year later, in January of 2010, Mary Margaret petitioned for the court to hold Julia in contempt for violating the Agreed Order. R. 44. She argued that her sister "has refused to comply with the Order of this Court in that she refuses to accept the designations of real property as set forth in the order and accompanying exhibits and the surveyor cannot complete his work and the real property cannot be divided without her cooperation." R. 44. Mary Margaret alleged that the surveyor, one Kirkland, "was forced to stop" his survey because Julia would not cooperate. R. 44.

Several months later in May of 2010, Julia asked the court for relief from the Judgment. R. 65. She argued that the newly-performed survey would leave her without access to a public road. R. 66. She also argued that "the Judgment is unenforceable because it is ambiguous," as it appeared after the preliminary surveying that the property was even more different than the siblings learned prior to the Agreed Order. R. 66.[2]

The matter was set for hearing on October 1, 2010, but that was continued until October 22; it was then pushed twice more through November and December until early 2011.

Before the matter was heard by the trial court, and without placing notice on the docket, Julia transferred her Two Acre puzzle piece to her daughter Bellissa. *See* Ex. 2 (in Manila Folder).[3] Although Julia had consented to the Agreed Order regarding the property which contained her pre-existing puzzle piece in February of 2009, knew her sister sought contempt against her for blocking the survey of the property in January of 2010, and had petitioned the Court regarding the property in May of 2010, she *still* transferred the Two Acres to her daughter on November 3rd, 2010.

---

[2] At some point Julia filed an Amended Motion for Relief, but only the first and last page are in the Record. R. 79-80. Counsel for Bennie sent two letters asking for a full copy, but the Record does not contain the entire motion. R. 83, 84.

[3] While the alleged deed is in the name of "Belissa," during the hearing her name was spelled out by counsel as "Bellissa," which will be used in this brief. Tr. 17.

Further, the alleged deed carries a heavy caveat—that it was "PREPARED WITHOUT THE BENEFIT OF A SURVEY OR TITLE EXAMINATION." *See* Ex. 2. Importantly, Julia would later concede through counsel that the alleged deed to Bellissa carried an error in description.

Despite that this matter was repeatedly set for hearing during this time period, the Record does not reflect that at any point Julia informed the chancery court or her siblings about the transfer of the Two Acre puzzle piece, an integral part of the land in dispute.

The trial court conducted a hearing on the matter on January 13, 2011. The sole witness was surveyor Brandon Kirkland. He testified that after beginning the survey, he realized that it was impossible to partition the siblings' property according to the Agreed Order. Tr. 16. The impediment was Julia's puzzle piece—the 2.02 acres. Tr. 16. The surveyor also testified that the alleged deed to Bellissa had an error. Tr. 18.

At this point the trial court interjects to ask more about the Two Acres—which according to Julia's lawyer, is for her house—or "[t]hat's where it was intended to be, I think." Tr. 19. For Julia's house is not located on the *actual* Two Acres, but a bit across from it. Tr. 19. The history of the 2.2 acres is then explored by the court and parties. Tr. 20-21. Yet as the surveyor again testifies, the alleged deed to Bellissa has an error in it, one attributed to the lawyer who drew up the deed. Tr. 21. Julia's attorney again admits there is an error in the deed. Tr. 21.

The court, trying to corral this bucket of cats, ascertains the intent of the parties: wasn't the point of the Agreed Order to give Julia her Two Acres? Tr. 23. The expert surveyor responds in the affirmative; the intent was to preserve Julia's 2.02 puzzle piece that "she already owned." Tr. 23.

As the court then reasons, the Two Acres "had nothing to do with this partition and we were adding to the backside of her [existing] property." Tr. 23. The surveyor agrees. Tr. 23.

Critically, dispositively, importantly, the following is established: *Julia did not have title to the 2.02 acres she allegedly deeded to Bellissa*, because the Two Acres was out of place the whole time:

> THE COURT: Now, what you find when you go out looking at this on the ground and looking at the deeds is that [Julia] didn't actually own this 2 acres here.
>
> THE WITNESS [Kirkland, the Surveyor]: Right.
>
> THE COURT: Where is the property that [Julia] actually owns if you're going to place it on this plat that is Exhibit 3-B?
>
> THE WITNESS: If you moved this line east 210 feet and this line east 210 feet, it's going to put this line all the way almost to that curve in the road.

Tr. 24. In other words, the puzzle piece was about 210 feet off, and had been until the surveyor determined it was askew. Tr. 24. As the trial court then ascertained, the actual location of the Two Acres "won't work" under the old Agreed Order, because it would deprive Mary Margaret of road frontage—a key requirement. Tr. 24.

The trial court then demands input from the assembled lawyers on behalf of Bennie, the brother, and Julia and Mary Margaret, the sisters: "Does everybody agree that it was the intent and understanding of the parties that Julia already owned 2 acres and we were going to add to the backside of her property with this partition?" Tr. 24. The "yes, sirs" are uniform: all counsel agree. Tr. 24-25.

The court then begins to muscle through the years of family quarrels and motions and continuances and *fixes the problem*, having the surveyor carve up the map live in court. Tr. 25-26. The court realized that the real issue was that the lines of the original map were always wrong, questioning the surveyor "what this boils down to is this [Agreed Order] would work fine if things had been as the parties thought they were?" Tr. 28. The expert witness agreed. Tr. 28.

The court again cautiously notes that the intent of the parties was to maintain Julia's Two Acres. Tr. 28.

Again, the problem is that the 2.02 acres was wrong—the actual *size* of the puzzle piece is correct, "[i]t just happens to be in the wrong place," as again questioned by the judge and answered in the affirmative by the witness. Tr. 29. Throughout the hearing, the trial court struggles to keep Julia's 2.02 acres intact, repeatedly referring to the intent of the parties. Tr. 29-30.

Ultimately, the court ruled from the bench that "[e]quity delights to do justice," and that "[t]he intent of the parties was to . . . recognize that [Julia] owned that 2 acres and give her some land right behind it as well as some land off to the east . . . ." Tr. 38. "The problem comes in," the chancellor determines," because the deeds regarding the 2.02 acres "contained an error." Tr. 38.

Having so ruled, the trial court tendered its Judgment to correct the problems in the deeds and modify the original Agreed Order, recognizing again that it "finds that the clear intent of the parties' contract, which was executed prior to the November 3, 2010, conveyance to Julia Powell to Belissa Powell, was to give Julia Powell land behind the approximate 2.02 acres of real property that she already owned and give Julia Powell land east of her land . . . ." R. 106.

The trial court strained mightily to do equity and fix the puzzle. Julia Powell was dissatisfied with getting *exactly what she asked for* in her Complaint—namely, 12.5% of the property partitioned to her, plus her 2.02 acre puzzle piece maintained and protected—and dissatisfied with receiving the boon that the errors in the deeds were corrected. She appealed. Briefing was completed. The Court then asked for further briefing on three issues.

Summary of the Argument

For three reasons the Judgment of the trial court was proper and must be affirmed. First, the trial court had jurisdiction over the entirety of the 49.54 acres, including the location of the 2.02 puzzle piece, for purposes of doing equity.

Second, it has been long settled in Mississippi that equity allows a trial court to reform a deed to serve the intent of the parties when there is mutual mistake.

Third, the alleged titleholder of the 2.02 acres is bound by the trial court's judgment.

Standards of Review

This case does not present a question of law. When reviewing decisions of the chancery court, "[a] chancellor's findings of fact will not be disturbed unless manifestly wrong or clearly erroneous." *Patterson v. Patterson*, 917 So.2d 111, 113 (Miss. Ct. App. 2005) (citing *Consolidated Pipe & Supply Co. v. Colter*, 735 So. 2d 958, 961 (Miss. 1999). Furthermore, the Supreme Court "will not disturb the findings of a chancellor when supported by substantial evidence unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous or an erroneous legal standard was applied." *Id.* (citing *Sanderson v. Sanderson*, 824 So.2d 623, 625-26 (Miss. 2002) (quoting *Kilpatrick v. Kilpatrick*, 732 So.2d 876, 880 (Miss. 1999)).

Argument

I. The Court Has Jurisdiction over the Location of the 2.02 Acres.

Because the trial court had jurisdiction over the Two Acres, the Judgment must be affirmed.

The Court asked the parties to answer "the jurisdiction, if any, of the court, over the 'excepted' property." The Appellant, Julia Powell, has answered this question in the affirmative, and to the extent she concedes jurisdiction in the trial court Mary Margaret agrees with her, as well as that chancery court is invested with the power to determine partitions.

Likewise, Appellee Mary Margaret answers this question in the affirmative—insofar as the Court may define where the Two Acres is *located.* It cannot be questioned that the chancery courts have the power to reform a deed, and have for many decades. *See McAllister v. Richardson*, 103 Miss. 418, 60 So. 570 (Miss. 1913); *Simmons v. North*, 3 Smedes & M. 67, 1844 WL 2070, *3 (Miss. Err.App. 1844) ("That courts of equity may carry out the intention of contracting parties, is a question which is beyond dispute . . . This is a prominent feature in equity jurisdiction").

The proper location of a disputed boundary is a controversy that has long been within the province of the chancery courts of this state to resolve. *Middleton v. Howell*, 127 Miss. 880, 892-93, 90 So. 725, 727 (1922). Though the decision may prove extremely difficult, it is nevertheless one the chancellor must undertake when called upon to do so, and he must adjudicate the location as best he can based on where a preponderance of the evidence indicates it to be, even though the proof may be sparse and largely unsatisfactory. *Kleyle v. Mitchell*, 736 So.3d 456, 460 (Miss. Ct. App. 1999).

The question of *who owned* the 2.02 acres was not before the Court and did not concern it. Only the *location* of the 2.02 acres was addressed by the Court. Further, the Court did not exceed its jurisdiction because it did not order the Two Acres partitioned in any way. It simply moved the puzzle piece to where the expert surveyor testified its actual location was.

Further, the puzzle piece of the Two Acres was squarely before the trial court. The Two Acres was *not* excepted by the pleadings as to jurisdiction. The point of the Complaint, and especially in light of the Agreed Order, was not that the Two Acres wasn't subject to it—it was that it wasn't subject to *partition.* All parties agreed that the 2.02 belonged to Julia and Julia alone, and that it was her property. Yet her exclusive ownership is still burdened by the reality of the Two Acres' locale—smack in the middle of the property in dispute.

So while the 2.02 acres was not subject to partition by the trial court, its presence as a puzzle piece in the middle of the contested property securely placed it within the jurisdiction of the trial court in this partition matter. This is true especially in light of the Agreed Order, where all parties agreed to allow the trial court to equitable partition the property to the intent of the parties.

It is important to note that the Two Acres *is not harmed* by the trial court's ruling. It is moved, yes; but this is a boon to Julia. As her attorney noted at the hearing, the alleged Warranty Deed from Julia to her daughter Bellissa was flawed at the outset, and contained errors in the description. Therefore *all parties agree* that the Two Acres is wrongly described and wrongly located.

Because all parties had the intent to preserve Julia's Two Acres, and because the true intent of the parties was looked at and honored by the trial court, it is not legally impacted by the chancellor's thoughtful, Solomonic solution.

It is within the trial court's jurisdiction because there was a puzzle, and the parties disputed where the pieces went—but agreed that they all owned certain pieces. Bennie owned about 75% of them, and Julia and Mary Margaret each owned about a dozen. Julia also already owned her Two Acres puzzle piece. While it was not subject to being subdivided between the siblings, it might still get moved around on the board.

And so it did. Yet this dispute was triggered by Julia in the first instance, to partition the property; resolved by her entering an Agreed Order; thrust back into conflict by her obstruction of the Agreed Order; obfuscated by her alleged transfer of the Two Acres to her daughter; and throughout the learned trial court struggled to do equity.

We should not burden Bennie and Mary Margaret with further litigation simply because Julia is unhappy. We should not reverse the trial court because the findings were supported by credible evidence, and resulted from a strong and forthright invocation of equity.

II. Equity Allows the Trial Court to Reform Deeds.

Because the expansive powers of equity allow a trial court to reform errors in deeds to reflect the true intent of the parties, the Judgment must be affirmed. Further, the unclean hands of Julia Powell bar her from now opposing the equitable resolution of this land case, as the trial court strove to honor the intent of the parties and safeguard her interest in the Two Acres. Last, the law favors enforcing a family settlement.

The Court asked the parties to describe the "equity power, if any exists, of the chancellor to direct entry of a 'correction deed' which changes a deed to property not specifically described (and in fact specifically excluded) as part of the 'heir property' in pleadings before the court."

In accord with our answer above, the Two Acres were absolutely before the trial court—not subject to partition, but subject to the court's jurisdiction as to where it fitted in the larger section of land.

A. The Reformed Deed Honored the Intent of the Parties.

The Judgment must be affirmed because longstanding law allows a trial court to correct a deed to reflect the actual intention of the parties.

"The law permits reformation of instruments to reflect the true intention of the parties when . . . the erroneous part of the contract is shown to have occurred by a mutual mistake . . . ." *Brown v. Chapman*, 809 So.2d 772, 774 (Miss. Ct. App. 2002). "Mutual mistake" in such a situation is where "the party seeking relief is able to establish to the court's satisfaction that both parties intended something other than what is reflected in the instrument in question . . . ." *Id.*

"In an action to reform a deed based on a mistake theory, the petitioner must demonstrate a mutual mistake among the parties or a unilateral mistake in combination with fraud or inequitable conduct on the part of the benefitting party." *Wright v. O'Daniel*, 58 So.3d 694, 700 (Miss. Ct. App. 2011) (internal quotations and citations omitted). "Mutual mistake must be proven beyond a reasonable doubt." *Id.* When the error "constitutes only a unilateral mistake," mutual mistake does not apply, and the courts will not reform the deed. *Id.*

In this case, there was mutual mistake conceded by all parties, which warrants reforming the deed. The mutual mistake was to the whole of the map itself, which was simply not known at the time of the Agreed Order. Expert testimony demonstrated that the Agreed Order map was unworkable, in part because there were errors in the descriptions of the property. Further, it was undisputed by all parties that the description of the Two Acres contained an error.

The trial court specifically invoked the power of equity to effect the intent of the parties, and to honor the general boundaries of the Two Acres. It was undisputed that the description of the 2.02 acres contained an error, and this was corrected by the trial court. Equity grants this power and the intent of the parties was honored by the Judgment.

The Mississippi Supreme Court has approved a chancery court which reformed a deed in similar circumstances. In one early land case, shortly before dying a woman conveyed a deed to her sister—but the deed had the wrong land numbers. *McAllister v. Richardson*, 103 Miss. 418, 60 So. 570 (Miss. 1913). The trial court held that the conveyance was valid, but "the misdescription of the land was written through mistake." *Id.* The trial court allowed the title to be quieted, and further "to insert the correct numbers of the land." *Id.*

Even by 1913, the Court ruled that "[i]t is certainly well settled in this state that a court of equity has power to reform a deed so that it will conform to the real intention of the parties." *Id.*

at 571. Further, "[t]he correction of mistakes in deeds or other writings is one of the acknowledged heads of equity jurisdiction." *Id.* (internal quotations and citation omitted).

The Court upheld the chancellor's decision to reform the deed. *Id.* Further, the Court took great exception to the argument by the Appellant that the chancery court should *not* have reformed the deed. *Id.* Much as Julia does on appeal, the appellant in McAllister argued that it was improper, and sought "[t]o secure an announcement that will prevent trial courts in the future from volunteering, in litigated cases, to assist one or the other of interested parties." *Id.* The Supreme Court rejected this argument, as "[i]t was the *duty* of the chancellor to see that the case was fairly tried, and that all proper testimony was introduced to enable him to render a decision giving exact justice between the contending parties." *Id.* at 571-72 (emphasis added). For "[t]he very purpose of a court of equity is to extend fairness in determining conflicting claims, and to give full and complete relief in every cause presented." *Id.* at 72.

In demanding deference to these guardians of equity, the chancellors, the Court stated that "[t]here are some who seem to consider a trial judge a mere figurehead;" yet "[t]hey are wrong." *Id.* For among the many duties suffered by the chancellor, "[i]t is the highest duty to see that litigants have fair trials of their causes." *Id.*

It is this reason we have such a deferential standard for our chancery courts, and the reason why that standard must be employed in this case. Just as in *McAllister*, there was an error in a deed. Just as that case from 99 years ago, a party was aggrieved when a chancellor pushed puzzle pieces around on a board to do equity. Just as then as now, the chancellor should be affirmed when there is a substantial and credible reason for the decision. Just as in *McAllister*, it is beyond concern that the court has equity over the puzzle pieces. Julia Powell (and Bellissa, if she indeed has deed to the property) received a boon from the trial court in the form of a corrected deed, and this is not a basis for reversal, but a reason for thanks.

It is true that "[e]quity courts may not make new contracts for parties, and even though same may not be the kind of contract they ought to have made," but that is not what the parties seek in this event, nor what the learned trial court did. *See Rogers v. Clayton*, 149 Miss. 47, 115 So. 106, 108 (Miss. 1928). The alleged contract between Julia and her daughter Bellissa was not introduced or proven in any way, but that does not matter—for the trial court's ruling does not affect Bellissa's alleged deed. It does not partite her Two Acres, nor minimize it; instead, it only corrects a known and acknowledged error in the description. It does move the puzzle piece, but it does not *damage* it, or lessen it in any way. It honors it and protects it; the 2.02 remains "excepted;" it is simply altered within the boundaries of the puzzle at large.

Because the law allows the correction of deed in accord with the intent of the parties, the Judgment must be affirmed.

B. Julia Cannot Object to the Reformed Deed.

Because the doctrine of unclean hands bars Julia from contesting the Judgment, it must be affirmed.

The maxim of unclean hands sets out that "no person as a complaining party can have the aid of a court . . . when his conduct with respect to the transaction in question has been characterized by wilful inequity." *Brennan v. Brennan*, 605 So.2d 749, 752 (Miss. 1992) (quoting V.A. Griffith, *Mississippi Chancery Practice,* § 42 (2d ed. 1950)). In such situations "the doors of the court will be shut against him in limine," at the very threshold; "the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy." *Id.* (quoting Vol. 1 *Pomeroy's Equity Jurisprudence,* 4th Ed., Section 397, page 738). Quoting again the learned Judge Griffith and his treatise on chancery, the Court has held that the maxim may be invoked sua sponte by a court, as "[i]t is the duty of the Court to apply it of its own motion when it becomes evident that the facts are such that they call for the application of the

maxim." *Thigpen v. Kennedy*, 238 So.2d 744, 746-47 (Miss. 1970); *see also Brennan*, 605 So.2d at 752 ("The maxim should be applied by the court sua sponte where it is shown to be applicable").

As the Mississippi Supreme Court has justly held, "it is one of the oldest maxims of the law that no man shall, in a court of justice, take an advantage which has his own wrong as a foundation for that advantage." *Estate of Dykes v. Estate of Williams*, 864 So.2d 926, 932 (Miss. 2003) (internal citations, quotations, and alteration omitted). Nothing requires that "the conduct [is] of such a nature as to be criminal or justify any legal proceedings, but there must simply be a wilful act concerning the cause of action which can be said to transgress equitable standards of conduct." *Id.* (internal citations, quotations, and alteration omitted).

Julia Powell now complains of the trial court's equitable reformation of the deed even though she filed the lawsuit in the first place; entered into an Agreed Order partitioning the property; filed a Motion for Relief from the very Order she sought and then agreed to; and then in the midst of heavily contested litigation transferred a key piece of the puzzle from within the contested property.

Julia knew her Two Acres was an integral, indivisible piece of the puzzle before the trial court, and had already been accused by her sister of frustrating the Agreed Order. Nonetheless, she transferred it without warning or notice to her brother and sister in the middle of the litigation and prior to a final hearing on the merits.

Further, the corrected deed benefits Julia and the trial court repeatedly intoned during the hearing that the intent of the parties was to honor and protect Julia's Two Acres. No party opposed or contested her utter ownership of the Two Acres and indeed it is not disturbed by this corrected deed.

Julia has acted with unclean hands, and as a result this Court must uphold the Judgment of the chancery court.

C. Family Settlements Are Favored by the Courts.

Because the trial court's Judgment flowed from an effort to honor a family settlement, it must be upheld.

In Mississippi, "family settlements are much favored by the courts . . . They will be permitted to stand in many instances, notwithstanding they are based on mistake of law or fact, provided there is absence of conduct otherwise inequitable." *Strong v. Cowsen*, 197 Miss. 282, 19 So.2d 813, 814 (Miss. 1944); *see generally* Appellee's Brief at 14-15.

The Judgment in this case stemmed from the Agreed Order partitioning the siblings' property. According to expert testimony which no party controverted, this Agreed Order was ultimately unenforceable. The trial court fashioned the Judgment to honor the intent of the family in settling this case and reaching a result equitable to all parties. It honored the 2.02 already in Julia's possession, the parties' intent for her to keep the Two Acres, and also to effect their intent to make the 75%/12.5%/12.5% split between the siblings.

Because such a family resolution is favored by the courts, and was based upon substantial evidence, the Judgment must be affirmed.

Conclusion to Section II

For three reasons the trial court had the power to reform and correct the deed to the 2.02 acres. The expansive powers of equity allow a trial court to reform errors in deeds to reflect the true intent of the parties. Additionally, the unclean hands of Julia Powell bar her from now opposing the equitable resolution of this land case. Last, the law favors enforcing a family settlement.

III. The Alleged Titleholder of the 2.02 Acres Is Bound by the Order.

Because the trial court had jurisdiction over this matter, equity allows reformation of the deeds, and because the substantial rights of the titleholder will not be affected, the Judgment must be affirmed.

The Court asked "whether Julia Powell's daughter, to whom she attempted to deed the 'excepted' property is bound by any adjudication of title of her predecessor in title." The answer is yes, because the only effect on the 2.02 acres is a clarification and a correction of its location in accord with unopposed expert testimony.

Further, even if Bellissa is a bona fide purchaser for value as Julia argues, it does not affect the Judgment in this case. The normal protections we afford a purchaser of this type are not needed here. In one case the Court refused to allow reformation because ""[i]t is well established that we will not correct a mistake in a written agreement as against a bona fide purchaser without notice affected thereby." *Miller v. Lowery*, 468 So.2d 865, 867 (Miss. 1985). In that case, a BFP purchased property "Subject to the reservation of all oil, gas and other minerals in, on and under the above described land by prior grantors." *Id.* at 866. Yet there *were* no prior reservations of minerals by prior grantors, and so "[e]ven if the 'subject to' language is deemed to put the grantees on notice, a search of the county records would reveal no such prior reservations." *Id.* at 867. Therefore reformation was not proper. *Id.*

This case is materially different. First of all, as noted above, there is no proof in this Record, nor any presented to the trial court, that Bellissa was a bona fide purchaser. Even if she were, her 2.02 puzzle piece was situated in the heart of property in the midst of multi-year long litigation. Julia had entered into an Agreed Order to partition the land, and had already petitioned the trial court to change that order. A hearing was pending when she allegedly transferred the property to Bellissa. The lack of notice issues in *Miller* are not present here.

Further, the damage to the purchasers in *Miller* is also not present. In that case, valuable mineral rights were at stake—here, the only interest conveyed is in the acreage of the property itself, or 2.02 acres.[4] The trial court did not disturb the substance of the Two Acres—it remains that size—and only corrected the admitted and conceded failures of the alleged Warranty Deed. As set out above, during the hearing Julia's counsel conceded the deed erred in its description.

The trial court's ruling served the ends of equity, honored the expressed intent of the parties, and maintained the borders of the Two Acres and kept it safe from partition. The Judgment must be affirmed.

Conclusion

Because the trial court had jurisdiction over the 2.02 acres, the Judgment must be affirmed. Further, the trial court had the equitable power to reform the deed. Last, the Judgment does indeed bind any successors to Julia.

For these reasons the Judgment must be affirmed.

Filed this the 17th day of August, 2012.

Respectfully Submitted,

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[4] Julia reserved the mineral rights to herself, and indeed could not have transferred them to Bellissa, as they are held jointly with her siblings.

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CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that I have served by United States mail, postage prepaid, or via hand delivery, a true and correct copy of the above and foregoing *Supplemental Brief* to the following persons at these addresses:

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(via Hand Delivery)
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THIS, the 17th day of August, 2012.

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