2021 SELECTED

STATUTES & CASES

PRESENTED BY:
J. MORTON MATRICK

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HB 1156 - PASSED IN 2020, EFFECTIVE JULY 1, 2021, REVISES LAW CONCERNING NOTARIES & REAL PROPERTY AFFIDAVITS

Section 1 gives the name of the act.

Section 2 of the act includes numerous definitions.

Section 3 provides that the act becomes effective July 1, 2021.

Section 4 sets out those acts that a notary may perform and those acts which a notary may not perform such as when he is a party to the instrument among others.

Section 5 thru 9 provide the requirements that must be satisfied before a Notary may take an Acknowledgment.

Section 10 provides that if an individual is physically unable to sign, the individual may direct someone other than the notary to sign for him and the notary shall insert "Signature affixed by (name of individual) at the direction of (name of individual).

Section 11 thru 15 sets out who may take an Acknowledgment that will be recognized in Mississippi.

Section 16 sets forth the requirements for the notarial certificate that must comply with the provisions of the act.

Section 17 thru 19 provides that a Notary shall have a seal for which he is responsible and he must keep a journal.

Section 20 provides that a notary may perform a notarial act with respect to electronic records as determined by the Secretary of State.

Section 21 sets out the requirements to become a notary and

Section 22 authorizes the Secretary of State to deny a commission under certain circumstances.

Section 23 requires the Secretary of State to maintain an electronic database of notaries public.

Section 24 sets out certain things that a notary can not do.

Section 25 states that only Notaries may take an acknowledgment.

Section 26 states that the Secretary of State may adopt rules necessary to implement this statute.

Section 27 states that a notary commission in effect on July 1, 2021, continues until its date of expiration and must comply with the act after July 1, 2021.

Section 28 provides that the act does not affect any prior acknowledgment.

Section 29 provides that the act modifies, limits and supersedes the Electronic Signatures in Global and National Commerce Act, 15 USC Section 7001 et seq.

Section 31 amends Section 89-3-1 Mississippi Code of 1972 To provide for the recording of electronic documents in addition to regular hard copy documents and to provide that once a document is recorded, all persons shall be on constructive notice of the contents even if the acknowledgment does not meet the above requirements.

Section 32 sets out the various forms of acknowledgments that may be used and stipulates that if used, the acknowledgment shall be sufficient to satisfy all requirements of law.

Section 33 amends Section 89-5-8 to provide that the nontitled spouse to homestead property may file an affidavit of nonhomestead that both spouses abandoned the old homestead or that the nontitled spouse voluntarily separated from the titled spouse with no intent to return to the titled spouses homestead and currently occupies a separate residence. Any person making a false affidavit shall be liable. Any such affidavit must contain a legal description of the real property covered by the affidavit. Any affidavit so recorded shall be

prima facie evidence of the facts stated therein and the marketability of the title to real property.

Sections 34 thru 41 repeals numerous statutes dealing with notaries.

Section 42 states that the act shall take effect and be of force from and after July 1, 2021.

HB 354 Amends section 21-23-7 Mississippi Code to provide that for violations of municipal ordinances dealing with real property, a municipal judge shall have the power to order a defendant to remedy violations or authorize the municipality to remedy the violation should the defendant fail to do so and to assess the cleanup costs to the defendant as a judgment which may be enrolled in the office of the circuit clerk. Effective July 1, 2021

HB 953 Provides certain regulations regarding managing agents of homeowners associations which require him to put homeowners funds in a separate account insured by FDIC subject to approval by the homeowners association and prohibits transfers in excess of $10,000. Without prior written approval of the board of the homeowners association.

Section 2, 3 & 4 provides that the managing agent shall submit and the board of the association shall review current reconciliations of all of the associations bank accounts, current operating revenue and expenses and all ledgers, journals and etc.

Puts Duties on the Board

Section 5 provides that the homeowners association shall provide a fidelity bond for all directors, officers and employees, including the managing agent, however, the majority of members of the homeowners association may vote not to maintain such fidelity coverage and these provisions shall not apply. Effective July 1, 2021.

SB 2626 Amends Section 79-4-7 to provide that unless prohibited by the corporations bylaws a corporation may elect to hold its meetings by electronic transmission or other means of remote communication.

SELECTED CASES

ADVERSE POSSESSION – CROTWELL VS. T & W HOMES ETC 2020-CA-00331-SCT (MAY 20, 2021)

In 1973 Gilbert Lum conveyed a 40 acre tract by warranty deed to his daughter, Lucille Crotwell, reserving unto himself a life estate with full and absolute disposition as though he were the fee simple owner thereof.

In 1998, Lum executed a warranty deed to his grandson, Richard Prestage, subject to his life estate for the mineral interest.

A month after Lum's death in 1998, Prestage executed a note and deed of trust to First Family Financial Services, Inc. and from 2000 to 2011 Prestage executed several deeds of trust before the property was foreclosed and T & W Homes, was the successful bidder and received a substituted trustee's deed.

Crotwell filed a complaint to confirm title, remove a cloud on title and ejectment. The parties filed competing motions for summary judgment. The chancellor found that Lum reserved a life estate only and that the reservation of the right to reconvey was an illegal and void restraint upon alienation and requgnant to the granting clause.

The court of appeals affirmed the judgment of the Chancery Court and remanded the case. On remand, T & W counterclaimed, alleging it had acquired title by adverse possession for 13 years and 6 months prior to the current action. Crotwell claimed T & W took title in a void foreclosure and had no privity with a predecessor to tack the time of possession.

A day before the hearing, T & W obtained a quitclaim deed from the Prestages. The Chancellor concluded that the one acre deeded to Prestage became vested in him by adverse possession and that Crotwells no longer had any interest in the one acre. The Chancellor also concluded that whether the foreclosure was valid was of no moment and assuming it to be void, the quitclaim from Prestage to T & W conveyed the interest. Crotwell Appealed.

The Supreme Court Agreed and affirmed the judgment of the Chancery Court.

Notwithstanding the fact that the outcome would have been the same. Lum could now have accomplished what he intended to do under the Mississippi Real Property Transfer on Death Act which became effective July 1, 2020, and allows an individual to transfer his property by deed to take effect at his death with the provision that should he convey it during his lifetime to another person, the deed to the party previously conveyed becomes null and void.

DEEDS – ESTATE OF GREEN V. COOLEY 306 SO.3d 665

Harry Green owned multiple properties at the time of his death, eight of which are at issue in this case. Harry conveyed these properties to his sister, Shirley Cooley on December 31, 2003. Then on January 15, 2004, at Harry's request Shirley reconveyed six of these properties back to Harry via Warranty Deed. Harry took these deeds with him when he left the attorney's office but the deeds were not acknowledged and were never recorded.

On December 3, 2004 Harry traveled to Texas and delivered all of the December 31, 2003 deeds to Shirley and told her "if something happened to him, she would know what to do." The December 31, 2003 deeds were recorded December 4, 2004.

Harry had met Cristina in 2003 and they married January 31, 2004. Cristina testified that Harry never told her that Shirley owned any of the properties.

In 2007, Harry updated his will and left the properties deeded to Shirley December 31, 2003, to Cristina. Harry died July 6, 2010. Following Harry's death Shirley took control of the properties and Cristina filed a complaint for an accounting and declaratory judgement as to ownership of the properties in question.

Cristina argued that Harry properly accepted the deeds that reconveyed the properties and as a result they passed under the will. The Chancellor found that he intended for Cooley to possess the properties. Cristina appealed alleging that Harry had accepted the deeds and the Court of Appeals Affirmed the Chancellor's findings. Cristina petitioned for a writ of certiorari, which was granted.

The Supreme Court stated that once a deed has been signed and delivered, a subsequent surrender or destruction of it does not divest the grantee of title to the land and held that because Harry accepted the six January 15, 2004, reconveyance deeds, as between him and Shirley and their heirs, he was the rightful owner of the six properties at the time of his death and reverses

the judgment of the Court of Appeals and the Chancery Court as to the six properties.

In a well worded dissent, the Chief Justice joined by three other justices stated in effect that mere acceptance of an instrument does not necessarily constitute delivery. That the intent to deliver must be mutual and even when a deed has an acknowledgment which says it was signed and delivered, it is without force and effect unless there is an actual intent to deliver and a properly acknowledged deed that is recorded but which the Grantee declines to accept upon attempted delivery, was not delivered and is void. Therefore, even if a deed is properly acknowledged the deed does not become effective to transfer title until delivery and acceptance are completed.

EQUITABLE DISTRIBUTION – HATTON V. HATTON
2020-CA-00168-COA
NOT YET RELEASED FOR PUBLICATION

Jerry and Linda Hatten were married on or about August 2, 2007. Jerry was 69 and Linda was 64 at the time of their marriage.Prior to their marriage, Jerry and Linda executed an antenuptial contract which provided that their separate properties at the time of the marriage would remain separate in the event of divorce and that any property subsequently acquired or titled as joint tenants with full rights of survivorship shall pass to the surviving tenant and that such property shall remain titled as such, and neither party shall attempt at any time to sever such joint tenancy, unless mutually agreed upon by the parties. At the time of separation the only marital asset was the marital home titled to Jerry and Linda as an estate by the entirety, with full rights of survivorship as between them and not as tenants in common.

In the divorce, Jerry sought sole ownership of the home and other property owned prior to the marriage. Linda sought alimony, equitable distribution of the marital property, $150,000.00 and partition of the marital home.

Jerry challenged the partition based on the language in the deed and the antenuptial contract.

The Chancellor found only three marital assets, the home, insurance proceeds for repair of a damaged roof and outdoor furniture of unknown value. The Chancellor also found the antenuptial contract to be enforceable.

The Chancellor refused to grant either party exclusive use of the marital home and ordered the insurance proceeds to be used to repair the roof. Because of the joint tenancy stipulation in the contract and the indivisibility of the marital property absent a mutual agreement, the Chancellor found it unnecessary to address the Ferguson factors regarding equitable distribution of marital assets. The Chancellor did not consider Jerry's claim for dissipation of assets. Jerry appealed.

The Court of Appeals held that the facts were unmistakable and therefore, Linda's failure to file a response brief did not constitute an admission of error. That the marital property disposition was controlled by the contract and because there was no marital property or debt subject to equitable distribution, the failure to address the Ferguson factors was not error and because only marital assets are subject to equitable distribution the Chancellor did not err by failing to consider the claim for dissipation of assets. Therefore, the Court of appeals affirmed the judgment of the Marion County Chancery Court.

EQUITABLE ESTOPPEL – BECKWORTH V. BECKWORTH 312 So.3d 391

Ann bought residential property on February 2, 2011, and was the sole record owner. Ann's brother Archie was living in Chicago at the time, but started making monthly payments to Ann in the amount of $325. Three years later Archie moved into the property with Ann and continued making payments to her.

In May 2019, Ann notified Archie by mail to remove his belongings from the property and in July 2019, Ann filed an eviction action in justice court against Archie alleging he was a tenant renting a room in the residence.

The Justice Court ruled in Ann's favor and gave Archie 30 days to remove his belongings from the residence. Archie appealed to the Sunflower County Circuit Court alleging he was not a tenant but had an ownership interest in the residence.

At the trial Archie insisted that he and Ann had an oral agreement to be co-owners of the property and that the payments were toward purchasing the home, not rent. Citing the Statute of Frauds, the Circuit Court refused to allow Archie to submit evidence to support his claim of equitable estoppel it having been 8 years since the property was purchased.

The following day, Archie attempted to file a supersedeas bond for appeal which the Circuit Court denied because the cause did not involve a money judgment. Archie Appealed.

The Court of Appeals held that the doctrine of equitable estoppel may be used to enforce an oral contract which would otherwise be unenforceable under the statute of frauds. Therefore, the trial court erroneously denied Archie the opportunity to demonstrate the elements of equitable estoppel, but the denial of a supersedeas bond did not constitute reversable error. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Sunflower County Circuit Court.

LIMITATION OF ACTIONS – COLEMAN V. WGST 2019-CA-01740-COA NOT YET RELEASED

On April 12, 2010 Dorothy Coleman and Keith Coleman were divorced in Tennessee. Almost two years after the divorce, Dorothy enrolled a foreign judgment from the divorce proceedings in Mississippi.

Subsequently, on April 24, 2015, Keith deeded real property in Mississippi to WGST, LLC.

Four years after the conveyance on July 9, 2019, Dorothy filed a complaint against Keith, WGST, Fidelity National Fin. Inc., Keith's Attorneys, and several others alleging that she had a valid judgment lien on the property from the divorce and asked the court to set aside the deed, issue a writ of execution, impose a constructive trust, and order the defendants to account for past rent. Dorothy also alleged other causes of action including but not limited to unjust enrichment, negligence, lack of consideration, civil conspiracy, breach of contract, and promissory estoppel.

The defendants responded by filing motions to dismiss arguing that Dorothy's claims were barred by the statute of limitations and the Chancery Court granted the defendants motions from which Dorothy appealed.

The Court of appeals agreed that Dorothy only had seven years from the date the judgment was rendered to file her cause of action and Dorothy's judgment was rendered April 12, 2010 and her complaint was not filed until July 9, 2019, therefore it was time barred and her other causes of action were time barred as well and the judgment of the Desoto County Chancery Court was upheld.

MUNIMENT OF TITLE – WATKINS V. WATKINS
313 So3d 1092

Robert W. Watkins, Jr owned real property in which he and his spouse Donna lived together. Before he died he conveyed the property to himself and his two sons, Jeremy and Terrance, from a previous marriage. Robert executed his will at the same time he executed the deed to his sons.

In his will he named Jeremy as his representative, devised certain personal property to Donna, and devised his residual estate and any other property to Jeremy and Terrance.

On January 3, 2020, after Robert died, Jeremy and Terrance filed a petition in Chancery Court to have Robert's will probated as a muniment of title pursuant to Miss. Code 91-5-35. The petition was signed and sworn by Jeremy and Terrance. It was not signed or sworn to by Donna.

The Chancery Court entered its judgment admitting Robert's will to probate as a muniment of title.

Donna filed a motion to set aside the decree, asserting that the decree was invalid because she was a beneficiary under the will and also the decedent's spouse, and the petition did not have her sworn signature that was required by Miss. Code 91-5-35(1). Donna asserted this section as in effect when the petition was filed, required that all beneficiaries named in the will and the spouse of such deceased person if said spouse is not named as a beneficiary in the will.

Jeremy and Terrance responded that 91-5-35 had been amended by HB 1375 and only required the petition be signed and sworn by the personal representative of the decedent's estate and only required the spouses signature if there was no executor administrator.

Relying on the text of HB 1375, the chancery court denied Donna's petition. Donna appealed.

The Court of Appeals reversed the Hinds County Chancery Court because Miss. Code 91-5-35(1) which was in effect when the petition was filed required the signature of Donna, a beneficiary under the will and also a spouse of the deceased to sign and swear to the petition, the chancery court lacked subject matter jurisdiction over the action as all necessary parties were not before the court. Therefore the Court of Appeals reversed and remanded the judgment of the Hinds County Chancery Court.

Miss. Code 91-5-35(2), (3) and (4) now provides as follows:

(2) **The petition shall be signed and sworn by** the personal representative, including (a) an executor, (b) an administrator with the will annexed, or (c) other personal representative serving in a foreign jurisdiction. If there is no such serving executor, administrator with the will annexed, or other personal representative, then it shall be signed and sworn by (i) the spouse of the decedent, if then living, and (ii) **the devisees of the Mississippi real property, whether specific or residuary, but** excluding persons holding mere contingent remainder interests in the real property.

(3) The petition may be signed for and on behalf of the spouse of the decedent, or a beneficiary under the will of the decedent, by a person acting in a representative capacity in accordance with Section 91-8-303.

(4) The probate of a will under this section shall in no way affect the rights of any interested party to petition for a formal administration of the estate or to contest the will as provided by Section 91-7-23, Mississippi Code of 1972, or the right of anyone desiring to contest a will presented for probate as provided by Section 91-7-21, or as otherwise provided by law.

NECESSARY PARTIES - ESTATE OF STEPHENS V. ESTATE OF PALMER 2020-CA-00044-COA NOT YET RELEASED

In 2001, Mark Stephens, Sr. purchased property in Lauderdale County, Mississippi from H. C. "Sonny" Palmer. On July 16, 2007 he executed a renewal deed of trust to Robert M. Dreyfus, as trustee, for the benefit of Sonny and his wife, Shirley.

Under the deed of trust, Mark, Sr. was to pay the debt and all taxes and assessments which he did until his death in February 2011. He also granted the trustee the right to conduct a non-judicial foreclosure in the event of default at the request of the Beneficiary. In February 2013 Sonny passed away, leaving Shirley as the sole beneficiary. The Stephens Estate claimed in its complaint that it paid the loan in full in August, 2014.

In November 2014, Shirley assigned the deed of trust to Marc Dunlap and wife, Candice and according to the Dunlap's the deed of trust was in default as to both its payments and non payment of taxes and they asked Dreyfus to foreclose and the Dunlap's, being the highest bidder, purchased the property at the foreclosure sale.

On May 18, 2016, Mark, Jr. filed a complaint on behalf of the Stephens Estate against the Dunlaps and Shirley to set aside the foreclosure sale, alleging they wrongfully foreclosed and did not give proper notice to Mark, Jr.

Shirley died March 29, 2017. The Stephens Estate amended its complaint to add Shirley's Estate as a party.

On May 24, 2018 and October 1, 2019, the Dunlaps filed a motion to dismiss the complaint and the amended complaint. On October 17, 2019, The Stephens Estate filed its response and on November 20, 2019, the chancery court heard arguments on the motion and rendered its judgment on November 21, 2019, finding that the Stephens Estate has failed to include all necessary parties by not including the trustee, Dreyfus as a party and because the statute of limitations had run on an action

against the trustee, the court dismissed the action. The Stephens Estate appealed.

The Court of Appeals held that Dreyfus carried out his duties as trustee and because the Stephens Estate challenged his actions, the chancery court did not err in finding that the trustee was a necessary party and because the Stevens Estate did not argue the issue of the three year statute of limitations, it was waived and because the Stevens Estate did not present cited authority or a showing of payment, the court did not err in failing to address the paid in full argument, and because the prerequisites to the foreclosure sale were not proved to be violated, the foreclosure could not be set aside, therefore the Court of Appeals affirmed the judgment of the Lauderdale County Chancery Court.

THIS ONE IS FOR FUN!

PRESUMPTION OF DEATH – IN RE JOHNSON, 312 So3d 709

Ashley B. Johnson filed a petition for presumption of death for her father, Audray Johnson. Ashley claimed that, despite her father's physical form continuing to live and breathe, Audray had been gone from his physical body more than seven years and thus should be declared dead.

Audray suffers from mental illness, Audray changed his name in 2017 to Akecheta Andre Morningstar and was present at the hearing and testified as to Audray's death. He testified that Audray's spirit died more than seven years ago and that he, Morningstar, now occupies Audray's former physical body. He also testified that he was dispatched from the heavens to save the world and that the "Great Spirit" had altered his DNA such that it differed from Audray's, claiming it had altered his liver function and even made him slightly shorter. He acknowledged that he and Audray shared a social security number and that he lives in Audray's last known residence with Audray's wife and daughter.

The chancellor denied the motion, taking judicial notice of the fact that Audray appeared before the chancery court in 2017 to petition for his name change, and therefore had not been absent from the state for at least seven successive years. Ashley appealed.

Because Audray had not been absent from or concealed himself in the state for seven years and because Audray was allowed to change his name and because the Supreme Court does not have the right to create new law amending the presumption of death statute to include aliens and because Ashley failed to cite any authority supporting her position and because she failed to explain how the chancery clerk's actions prejudiced her case, the Supreme Court affirmed the judgment of the Hinds County Chancery Court.

TAX SALES - THODEN V. HALLFORD 310 So.3d 1156

Deborah Hallford record owner of a house in Jackson County failed to pay property taxes. The Jackson County Chancery Clerk attempted to notify Hallford that the period of redemption was ready to close, but the clerk did not satisfy two of the three statutory notice requirements. Personal Service, Mail, and Publication.

When the redemption period expired, the Chancery Clerk conveyed title to Pierre Thoden after he paid all delinquent taxes. Thoden obtained a judgment of possession and began making improvements to the property.

Hallford filed a complaint to set aside the tax sale, claiming she never received proper notice through personal service, that the tax sale was void and should be set aside.

After two hearings the Chancellor ruled in favor of Hallford, finding that there was inadequate notice and that the tax sale was void. The order denied Thoden any relief for failure to present proof. Thoden filed a motion to amend the Chancellor's judgment, arguing that the grant of summary judgment to Hallford and denial to Thoden of a statutory lien because Thoden paid $500. at the tax sale. The Chancery Court ordered Hallford to pay Thoden $500. plus interest within 90 days or Thoden would be able to enforce the lien. Thoden appealed.

Because there was no discussion regarding Thoden's damages, the burden was on Thoden to present proof of damages and the claim for damages was remanded for a hearing. Because the tax sale was void ab initio, meaning the land was never sold for taxes, therefore, the Supreme Court Affirmed the judgment of the Jackson County Chancery Court.

TAX SALES - OUTLAW V. O'CALLAGHAN 2019-CA-00318-COA

In 2009, Linda and Michael O'Callaghan purchased two residences to be used as rental properties. The properties were titled in the name of Kenmare Group, LLC, which was purportedly a Mississippi Limited Liability Company with the O'Callaghan's California address listed as its mailing address. However, Kenmare was never registered with the Mississippi Secretary of State's office.

In 2014, Linda moved and continued to receive rental income from the properties and paid the ad-valorem personal property taxes,, however, she had not paid the ad-valorem real property taxes for nearly three years.

In 2012, Markeeta Outlaw purchased subject property at a tax sale for the 2011 unpaid taxes. In May 2014, the chancery clerk sent a notice of forfeiture by certified mail to Linda's original address stating the owner had a right to redeem until August 27, 2014. The clerk's office received the certified mail return receipt listing the date of delivery as May 29, 2014, however, it contained an illegible signature which the clerk's office flagged as "unable to read."

In November 2014, the chancery clerk recorded the conveyance of land and issued a tax deed to Outlaw. Outlaw filed suit to quiet and confirm title and in October 2016, the chancery court granted Outlaw a default judgment, and Linda's management company notified her as to the tax sale. In October 2017, Linda moved to set aside the default judgment. The chancery court found deficiencies in the statutorily required notice and granted the motion to set aside in favor of Linda because of an alleged inadequate description and failure of the notice to contain the signature and seal of the clerk or deputy clerk. Outlaw appealed.

Because there was no signature the notice provides no obvious clue that it is an official document. The statute does not require the landowner to receive notice. The statute only requires the

clerk to follow the statute and make further inquiry should the notice be returned "undelivered." Therefore, the court held the notice sufficient. Therefore The Court of Appeals found the lower court erred in holding the property description and delivery of notice was insufficient. However, it found no error in the court's ruling that "the statutes and procedure concerning the notice of tax sale to the landowner were not strictly followed and the sale must be set aside as void." The Court's judgment setting aside the tax sale and confirming title in O'Callaghan is affirmed.

TIMELENESS - MADDOX V. MADDOX 2019-CA-00318-COA

In 2013 Mitchell Maddox and Walterine Maddox (Maddox) filed a complaint against Mike and Deanna Maddox and Christopher and Amada Sullivan (Sullivan) to remove a cloud on title, confirm title and injunctive relief concerning a sliver of land abutting their properties. In their complaint, Maddox described the property, claimed ownership via a Warranty Deed Recorded in Simpson County and sought injunctive relief and attorney's fees for trespass onto their property. Additionally Maddox asserted a claim of adverse possession, but this paragraph of their complaint failed to contain a description of the property adversely claimed.

Two months later Sullivan filed an answer, a counterclaim, and a third party complaint seeking an adjudication that they were the owners of the sliver of land and requested injunctive relief that would enjoin Maddox from entering the Sullivan's property.

In 2018, nearly five years after the initial complaint, both parties signed a pretrial order. The Maddox claim for adverse possession was listed in the pretrial order, but the description was for the Maddox property which was undisputed by the Sullivans. The pretrial order also stated that it would not be amended except by consent of all parties or by order of the court to prevent manifest injustice. At the trial, the Sullivan's argued that all claims related to the property were uncontested because the property described in the Maddox adverse possession claim was undisputed. After discovering the mistake, the maddoxes made an ore tenus motion to amend their complaint to add the correct legal description for the sliver of land. The trial court denied their motion and Maddox appealed.

The Court of Appeals held that because the Maddox claim for adverse possession was not properly before the court and because Maddox waited approximately six years to request leave to amend their complaint, there was no abuse of discretion or error in the trial court's ruling to deny the Maddox ore tenus

motion to amend. Therefore, the Court of Appeals affirmed the judgment of the Simpson County Chancery Court.

UNDUE INFLUENCE – STOVER V. DAVIS 268 So.3d 559

Tamora Robinson died in October, 2013. Before her death, she executed a last will and testament in June 1993, a first codicil in October 2000, and a second codicil in May 2013. In November 2013 Marquan D. Stover filed a motion to contest the second codicil on the ground that it had been the product of undue influence by Elaine Davis.

The second codicil changed the disposition of 30 acres of land to Davis and made Davis Executrix. Robinson had a stroke in early 2013 and suffered from dementia. Davis visited Robinson on May 20, 2013 in her nursing home. That day, the two talked about Robinson's will and davis called Robinson's attorney saying that Robinson wanted to make changes to her will. Robinson's attorney came by the nursing home and met privately with Robinson. After meeting with Robinson, her attorney drafted a second codicil, and it was subsequently executed. At trial, the chancellor found that Stover had not satisfied his burden of showing that the second codicil was the result of undue influence and dismissed the motion to contest. Stover appealed.

Because a presumption of undue influence is raised by the existence of a confidential relationship between the testator and the beneficiary under the will along with suspicious circumstances, and because Stover successfully raised this presumption by showing that Robinson and Davis had a confidential relationship, that suspicious circumstances were present because of Robinson's physical and mental states and Davis Contacted Robinson's attorney concerning changes to the will, the trial court erred in holding that a presumption of undue influence did not exist. Therefore, the Supreme Court reversed the judgment of the Hinds County Chancery Court and remanded the case for further proceedings not inconsistent with this judgment.

WILLS, FINAL JUDGMENT - TAYLOR V. TOLBERT 2020-CA-00904-SCT NOT YET RELEASED

Mary Markwell, deceased, was the grandmother of Michael Taylor and the mother of Cheryl Tolbert. In 2014, Markwell's lawyer drafted a will leaving all of Markwell's property to Taylor. The lawyer kept a copy, but Markwell kept the original although it was never seen again.

After Markwell died, Taylor learned that Markwell had left her property to him but he could not find the original will. Taylor filed a petition to probate the copy of Markwell's will. The chancery court entered an order admitting the will to probate and appointing Taylor Executor. Taylor filed for and received a temporary restraining order enjoining Tolbert. Taylor also filed a petition for injunctive relief to prevent Tolbert from spending money Markwell gave her shortly before her death. Tolbert filed a counter-petition, asking the court to set aside the probate of the will and to remove Taylor as Executor of the Estate. Taylor then filed a petition for recovery of deathbed gifts given to Tolbert, damages for trespass and conversion.

The Chancellor held that Taylor failed to rebut the presumption that a will last known to be in it's makers possession that cannot be found after her death is presumed revoked by destruction and entered an order setting aside probate of the will, but it was not styled as a final judgment. Tolbert filed a motion to proceed on her remaining counterclaims. Taylor appealed.

The Supreme Court dismissed the appeal of the Tate County Chancery Court Judgment, holding that because the order did not dispose of Tolbert's counter-claims or Taylor's claims to set aside inter vivos gifts, it was interlocutory, and because the chancery court's order did not include a Miss. Rules of Civil Procedure 54(b) certification, the order was not certified as an appealable judgment. Therefore, the Supreme Court dismissed the appeal.

WILLS, PROOF OF EXECUTION - CHRISTMAS V. CHRISTMAS 2019-CA-01821-COA NOT YET RELEASED

In February 1987 Luke Beard executed a will, leaving everything to his grandson Antonio Christmas. Beard told Antonio, but did not tell his only child, Diane Christmas. Beard died in 2001. After Beard's death, Diane continued to pay taxes on the land and Antonio maintained the Beard's house where he was living at the time of the trial. Antonio found Beard's will, but took no action and did not tell his mother about the will.

Having no knowledge about the will, Diane filed a petition to open an estate and settle her father's affairs in 2002. In that proceeding Diane was adjudicated as Beard's only heir.

Years later in 2014, Diane opened a second estate. Antonio was unaware of either of these proceedings, only learning about them after he attempted to stop a company from cutting timber on the land.

Antonio then filed a petition in 2018, to probate Beard's will. In the will there was no separate attestation clause for the witnesses to sign to attest that they witnessed Beard sign the will and that he was of sound mind. Diane contested the will. At trial, Antonio testified that he was familiar with Beard's signature and identified it on a "Marital Agreement on the property" which was introduced into evidence. Diane testified that at the time of execution Beard knew who she was and conducted his own affairs. Also, no doctor had ever said Beard's mind was not sound. Further, she agreed that she did not make a diligent attempt to locate a will in her petition for administration of the estate.

Because both witnesses were deceased at the time of the trial, Antonio called a local attorney to testify about them and he verified one of their signatures on the will, but was not asked about the other witness' signature. The Chancellor entered an order finding there had been a failure to present required

evidence of attestation as required by Mississippi law and dismissed the case. Antonio appealed

The Court of Appeals held that Miss. Code Sec. 91-7-7 provides that if note of the subscribing witnesses can be produced to prove the execution of the will then it may be established by proving the handwriting of a testator and of the subscribing witnesses, or some of them, and because of "or some of them" means verification of the testator's handwriting and at least one of the witnesses handwriting, Antonio presented sufficient evidence of due execution and the will should have been admitted to probate. Therefore, the Court of Appeals reversed and remanded the judgment of the Lincoln County Chancery Court.

ZONING - WHEELAN V. CITY OF GAUTIER 2019-CA-01062-COA NOT YET RELEASED

David Vindich purchased a .76 acre tract of land in Gautier, Mississippi. He wanted to build an 1,800 square foot garage on the land. The city had an ordinance that required approval by the planning director. Vindich met with the planning director and later claimed that the director had verbally approved a 1,410 square foot garage; however, the planning director later denied this. After the meeting, Vindich purchased plans to build the garage. Later, Vindich submitted his plans to the Building Department which denied his application. Vindich appealed their decision to the Planning Commission which approved his application and forwarded it to the City Counsel who also approved his application to build a garage and he proceeded to construct the building. When Wheelan saw that Vindich had begun constructing a garage, he had issue with the size and filed suit against Vindich, the City, and the individual members of the City Counsel alleging Vindich's building violated the city ordinance and thus required a public hearing, notice to neighbors and the public at large.

The trial court dismissed Wheelan's claims and held that the city's interpretation of the statute was not unreasonable, that the building was not a nuisance because the law does not grant someone the right to an unobstructed view across a neighbor's property. The trial court also dismissed Vindich's counter-claim against Wheelan for slander of title. Wheelan appealed and Vincich cross appealed.

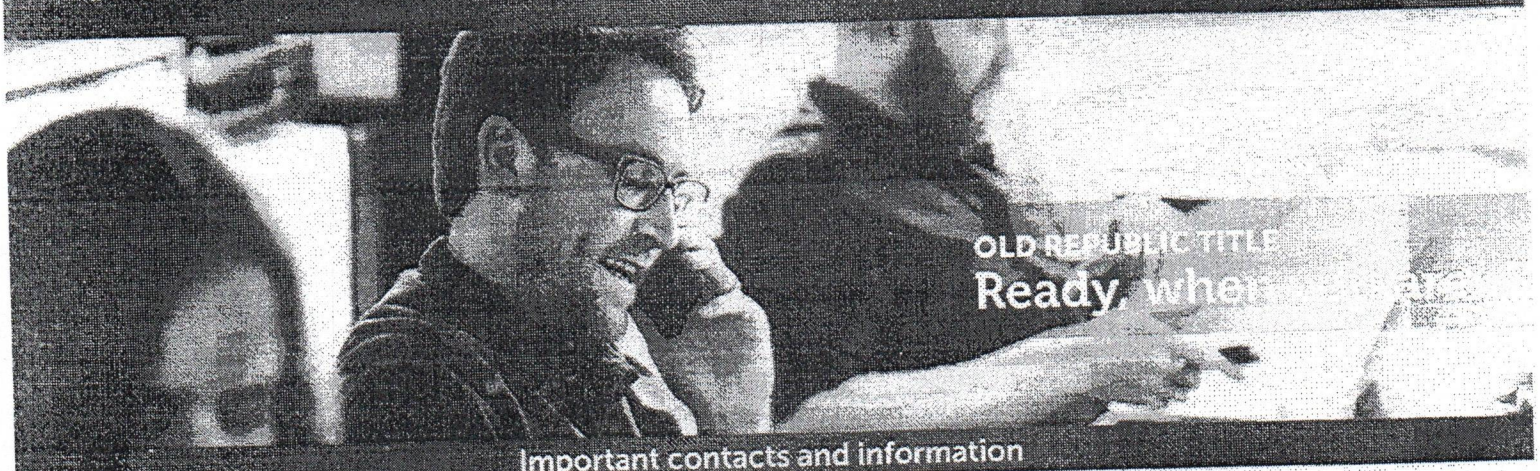
The Court of Appeals found that the chancery court had jurisdiction, that the city counsel's actions were not arbitrary, capricious or manifestly unreasonable, and since Vindich had applied for a building permit and not a variance there was no requirement for notice. Also, since Vindich presented no authority that Wheelan's statements questioning the validity of Vindich's building permit constituted slander of title, the trial court did not err when it dismissed Vindich's slander of title claim against Wheelan. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Chancery Court.

ZONING - HICKMAN V. CITY OF BILOXI 313 So.3d 541

David and Lori Hickman owned property in Biloxi that was zoned agricultural, but was used for scrap metal recycling under a use exception to the zoning ordinance. The Hickman's operated their scrap metal business, David Motor, on the property until 2012, when they sold it to SMM Gulf Coast, LLC. The sale included a transfer of assets, an employment agreement, a non-compete agreement barring the Hickman's from engaging in the scrap metal business in Mississippi and three other states for a period of five years, and a lease of subject property. The Lease Agreement was dated August 21, 2012, and provided for a six month term expiring in February 2013. After SMM failed to make the required payments in in 2014, the Hickman's initiated arbitration proceedings and in 2016 started a new recycling business, "Hickman Metal Recycling" at the Biloxi location. In 2017, the Hickman's applied to the Mississippi Department of Environmental Quality, MDEQ, for a permit to install a commercial shredder. However, the Biloxi Community Development Department, CDD, issued a notice of violation to the Hickman's, alleging that their zoning exception had terminated because the non-conforming use had ceased for at least a year, resulting in the loss of the non-conforming use status. The Hickman's appealed to the City's Board of Zoning Adjustment where CDD offered evidence from the Secretary of State showing that David Motor had dissolved in 2013 and Hickman Metal Recycling was first registered in December 2015. After considering all of the evidence, the Board unanimously voted to affirm the CDD decision and the Harrison County Circuit Court affirmed the Board's decision. The Hickman's Appealed.

Because the Board's decision was supported by substantial evidence, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

OLD REPUBLIC TITLE



Important contacts and information

Mississippi

Underwriting	Name	Email	Phone
	Morton Matrick	mmatrick@mvt.com	601.506.7306 or 601.961.4815
	Parrish Fortenberry	pfortenberry@mvt.com	601.961.4853 or 601.209.2220
	Scott Magee	smagee@mvt.com	601.832.2933 or 601.961.4818
	Lindsey Nichols	lnichols@mvt.com	601.953.2477 or 601.961.4828
Claims	Name	Email	Phone
	Brad Jones	bjones@oldrepublictitle.com	601.955.4111 or 601.961.4866
	Marc Bryant	mbryant@oldrepublictitle.com	601.540.1000 or 601.961.4813
Title Services	Name	Email	Phone
	Debbie Porter	dporter@mvt.com	601.961.4865 or 601.259.3341
	Lindsey Nichols	lnichols@mvt.com	601.953.2477 or 601.961.4828
Accounting	Name	Email	Phone
	Bonnie Woods	bwoods@mvt.com	601.961.4852 or 601.937.5724
Billing	Name	Email	Phone
	Bonnie Woods	bwoods@mvt.com	601.961.4852 or 601.937.5724
Sales/Agency	Name	Email	Phone
	Terry Weill	tweill@mvt.com	601.927.1808 or 601.961.4869
	Claire Ewing	cewing@mvt.com	601.214.4480 or 601.961.4844

Mississippi Valley Title
1022 Highland Colony Parkway, Suite 200
Ridgeland, MS 39157

P: 601.969.0222
F: 601.969.2215
TF: 800.647.2124