

**IN THE SUPREME COURT OF MISSISSIPPI  
COURT OF APPEALS OF THE STATE OF MISSISSIPPI  
CASE NUMBER 2013-CA-00533**

**HERMAN SCOTT, INDIVIDUALLY,  
ET. AL.**

**APPELLANTS**

**v.**

**ANDERSON-TULLY COMPANY**

**APPELLEE**

**BRIEF OF APPELLEE, ANDERSON-TULLY COMPANY**

APPEAL FROM THE CHANCERY COURT OF JEFFERSON COUNTY, MISSISSIPPI

ORAL ARGUMENT NOT REQUESTED

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. The Honorable George Ward, Chancery Court of Jefferson County
2. Herman Scott and Leroy Hughes, Appellants
3. Patricia A. Catchings, Attorney for Appellant
4. Michael Keyton, Attorney for Appellant
5. Anderson-Tully Company, Appellee
6. Landman Teller, Jr. and Lauren Roberts Cappaert, Attorneys for Appellee

THIS the 3 day of March, 2014.

/s/ Lauren Roberts Cappaert  
LANDMAN TELLER, JR.  
LAUREN ROBERTS CAPPAERT

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**STATEMENT REGARDING ORAL ARGUMENT**

Pursuant to Mississippi Rule of Appellate Procedure 34, Appellee does not make a request for oral argument.

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**I. STATEMENT OF THE ISSUE**

Whether the Chancery Court erred in determining that Anderson-Tully Company proved by clear and convincing evidence that the property in dispute was titled to and owned by Anderson-Tully Company under the theory of adverse possession.

**II. STATEMENT OF THE CASE**

This matter arises from a boundary line dispute over approximately twenty (20) acres in Jefferson County, Mississippi. The Appellants, Herman Scott, *et. al.*, (“the Scotts”) filed a complaint alleging that Anderson-Tully Company (“ATCO”) wrongfully cut timber on the disputed tract, causing Appellants damage. ATCO filed a Response which stated it had owned and possessed the disputed property since 1969.<sup>1</sup>

Trial in this matter was had before Jefferson County Chancellor George Ward on April 16 and 17, 2012. The Chancellor rendered his decision on February 22, 2013, and found the “evidence overwhelmingly support[ed]” that ATCO met each element of adverse possession. In his opinion, the Chancellor ruled that Anderson-Tully Company was the owner of the disputed

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<sup>1</sup>Following several amendments to the initial Complaint (C.P. 46, 60), ATCO filed its final Answer and Counterclaim to confirm title in ATCO. (C.P. 123).

twenty acre tract. (C.P. 150).

The Scotts then filed a Motion for New Trial, Motion for Reconsideration and Motion for Hearing, based on the Scotts' discovery of a map. (C.P. 171). ATCO's response stated it was not shown why this map was not produced in the almost three years between the filing of the Complaint and the trial, nor did this map have any bearing on ATCO's claim for adverse possession. (C.P. 176).<sup>2</sup> Accordingly, the Motion for New Trial, Motion for Reconsideration and Motion for Hearing was denied by the Chancery Court. (C.P. 184). Thereafter, the Scotts filed this appeal.

### **III. STATEMENT OF THE FACTS**

On February 12, 1969, Anderson-Tully Company was issued a Deed for two described parcels of property in Jefferson County, Mississippi, which for all intents and purposes, included as Parcel One what was known as and continued to be called the "Pruitt" or "Hollywood" place. (Appellee's R.E. 1). The pertinent portion of the legal description contained in the deed stated that ATCO was acquiring:

all of section twenty-nine (29), all of section thirty (30), except that part or portion in the Northeast corner thereof lying Northeast of the public road; and all of that part or portion of section thirty-two (32) which lies northerly or northwesterly of the old bed of Hutchins Creek, and westerly or southwesterly of the public road; all in Township Ten (10) North, Range One (1) East.

The description additionally states that the property is bounded by the lands of Willie Scott, et. al. The lands of Willie Scott refer to the present parcels of land owned by the estates of

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<sup>2</sup>At the hearing on this Motion, it turned out that the "newly discovered" evidence was nothing more than an abstract of title performed by an attorney in 1934, which had no relevance to the ultimate issue to be decided. (T. 393-400).

Stewart Scott, Jr. and Willie Scott.<sup>3</sup>

The description as to this parcel lastly states it includes:

The entire “Pruitt” place or “Hollywood” place, as now constituted, and being all of the original place except the portion thereof lying in the sixteenth or school section, is intended to be and is hereby conveyed, regardless of whether the above description be accurate and correct or not. (Appellee’s R.E. 2).

And conclusively referring to both parcels conveyed, being the Hollywood Tract as Parcel

One and the Jones Tract as Parcel Two, the deed recites:

the acreage for said two parcels has been determined as best possible from a partial survey made by E. C. Burkhardt, Licensed Surveyor, and from the public records of said Jefferson County, Mississippi. (Appellee’s R.E. 3).

The description was not a metes and bounds description. ATCO offered as an expert witness in forestry and surveying Mr. E.C. Burkhardt, who was employed by ATCO as a forester and surveyor from 1950 to 1981. (T. 277). When ATCO wanted to acquire the Hollywood Tract, no one, including the owners of the tract, knew the acreage of the property, so Mr. Burkhardt was to perform a survey. (T. 281). Mr. Burkhardt testified that parcels of land in Jefferson County were some of the first south of Ohio to be surveyed by the US Government in 1805. (T. 279). After complaints about irregularities, the government came back and had to re-trace the lines. (T. 280). Mr. Burkhardt testified that when surveying areas in Jefferson County, “your best evidence is what you find out there on the ground. . . . You’ve got to pay attention to the lines on the ground, the evidence of possession; and quite often that’s all you’ve really got to go by to determine boundary lines.” (T. 280). Additionally supporting the difficulty in determining the

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<sup>3</sup>Herman Scott, Individually and as Administrator of the Estate of Stewart Scott, Jr; Leroy Hughes, Individually and as Administrator of the Estates of Leathan Scott Hughes, Carrie Scott and Percy Scott are the Plaintiffs/Appellants in this matter.

boundary lines in this area was a survey put into evidence by the Plaintiffs relative to the Scotts' property. This 1944 survey of the property by Jefferson County Surveyor, B.G. Miller, has a note which stated, "20 1/10 acres outside of fence & may be disputed." The east boundary line on his survey following the fence shows a clear and logical indicator of what was intended to be the boundary line between these two respective properties. (Appellee's R.E. 4; T. 305-07; Trial Ex. 10).<sup>4</sup>

The Scott Estate property is adjacent to and west of the property purchased by ATCO, and this old fence lies in the northeast corner of Section 28 between the Scott property and ATCO property. (Appellee's R.E. 4). By his 1969 survey, Mr. Burkhardt determined that the old fence constituted the boundary line between the property ATCO was purchasing and the Scott Estate property. (Appellee's R.E. 5; T. 285-87; Trial Ex. 18). Multiple witnesses testified for ATCO that this fence was the accepted boundary line between the Scotts' property and ATCO property. (T. 219; 287; 333). The Scotts claimed that the fence at issue was built as a fence of convenience to contain livestock. (T. 37).

Furthermore, in Mr. Burkhardt's field notes which were taken contemporaneously with the survey, and which were entered into evidence, he made reference to conversations with neighbors of the property, including Eddie Scott. (T. 290). It was shown in his notes that no one objected to where he put the flagging and the stakes during his survey. (T. 291). Mr. Burkhardt completed his survey and shared his results with the surveying firm representing the sellers of the Hollywood Tract; and everyone was in agreement with the description and acreage. (T. 283). The

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<sup>4</sup>The "disputed" acreage is the acreage east of the fence which is now owned by ATCO and is on ATCO's side within the fence, the fence constituting ATCO's western boundary line.

acreage included the twenty acres in dispute in the instant case. The acreage was actually a part of section twenty-eight and not specifically described in the deed, but it is included in the description since it is referred to as being part of the Hollywood Tract, by reference to Mr. Burkhardt's survey. (Appellee's R.E. 3, 5; Trial Exhibits 17, 18).<sup>5</sup> Thus, ATCO maintains, and has maintained since 1969, that the catch-all portion of the description for the Hollywood Tract and the reference to Mr. Burkhardt's survey included the twenty acres.

As company procedure, at least since 1920, possibly earlier, ATCO has painted its boundary lines a particular shade of blue to put people on notice of ATCO's property. (T. 324). Once ATCO purchased the Hollywood Tract, the boundary lines were hacked and painted blue.<sup>6</sup> (T. 295). Mr. Burkhardt testified that had someone regularly crossed this blue boundary line, he would have been notified. During his tenure with ATCO, he was not notified this line was ever crossed by anyone. (T. 323-24).

Also testifying as to ATCO procedure after the acquisition of land was Glynn Brown, a land manager for ATCO from 1986 to present. (T. 326). He testified that ATCO claimed the twenty acres in section twenty-eight as its own. The boundary lines belonging to ATCO were painted blue in 1968 or 69; 1986 and 1998, and company records reflect this painting schedule. (T. 339).

Timber stand improvement ("TSI") by ATCO also took place on the Hollywood Tract, including the twenty acres. TSI involves the cutting of the surface of the tree around the diameter

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<sup>5</sup>See the final page of this brief, page 20, for a copy of this exhibit with notations made in red to assist in reviewing Mr. Burkhardt's survey, and understanding the location of the line.

<sup>6</sup>Hacking timber means to cut, notch, slice, chop, or sever (something) with or as with heavy, irregular blows.

and then the injection of poison into the trees in order rid the area of undesirable or un-merchantable trees, and this process is an improvement on the land. (T. 341). A contract between ATCO and a contracted crew to perform TSI on the property was entered into evidence (T. 341).

In addition to TSI, harvesting and cutting of timber by ATCO took place on the disputed twenty acres. In order to harvest on the whole of the Hollywood Tract, ATCO would have had to have accessed through the Scotts' property, and this harvesting process could have taken up to a month. (T. 348-49).

Sam Price, an ATCO logging employee from 1968 to 2001, personally participated in four timber cuts on the whole of the Hollywood property. During these cuts, Mr. Price would go to the "Scott enclave" and "seek out the oldest person and tell him who I was and what I wanted to do, and he would tell me to go ahead." (T. 385). Mr. Price testified to cuts on the property in the late 1970's and middle 1980's. (T. 381). The Scotts knew from Mr. Price that the property was being cut. Records entered into evidence reflect that timber was also cut on the property in 1990, 1999 and 2010, and these records included plats showing the property where the timber cut took place. This property clearly included the twenty acres. (T. 346-47). ATCO would cut timber up to its blue boundary line. (T. 349).

Testimony was also given by Mr. Wilbur Nations, a disinterested witness celebrating his 90<sup>th</sup> birthday on the day after he testified and who coincidentally is a licensed (Alabama) surveyor who grew up on what was known as the Hollywood Plantation (which included the twenty disputed acres), having resided there beginning in 1929. Mr. Nations' brother had leased a portion of the Hollywood Tract until it was purchased by ATCO. (T. 215). While Mr. Nations did not reside on this property at the time of the instant action, he is a long-time member of the

Linwood Hunting Club, which had a hunting license from ATCO for a portion of the Hollywood Tract, which included the twenty acres.

The Linwood Hunting Club also had a hunting lease with the Scotts from 1997 to 2007. Mr. Nations stated that the boundary line through the disputed area was the aforementioned fence that was “new back in the thirties, the 1930's.” (T. 218). Linwood’s lease with the Scotts was “up to the fence line,” and, based on Mr. Nations’ conversation with Herman Scott, Herman Scott understood this. (T. 262). Mr. Nations testified that to his knowledge the Scotts did not ever come across the fence nor utilize any of the area east of the fence (the area in dispute), and that any timber cutting that the Scotts performed took place on their property west of the boundary line. (T. 219; 225). Mr. Nations testified that to his knowledge ATCO cut timber on its property, including the disputed acreage, three times. (T. 226).

When the lease between Linwood Hunting Club and the Scotts was not renewed at the option of the Scotts, a dispute arose between the hunting club and the Scotts as to ownership of the disputed acreage and from whom the hunting club had a lease. Mr. Nations testified that Herman Scott stated the hunting club could still use the road to “access the back of the west side of the Anderson-Tully land.” (T. 273). Significantly, Linwood’s multiple hunting license agreements with ATCO over the years contained a plat of the property being leased. Each of the plats contained the twenty acres in question. (T. 343; Trial Ex. 32). Wilbur Nations stated unequivocally that ATCO was the owner of the Hollywood Tract, including the twenty acres, and that Linwood had placed “posted signs all the way up that fence . . . .” (T. 215, 218).

The facts show that since 1969, ATCO exercised complete control and quiet enjoyment over the Hollywood Tract which included the twenty acres in question. Its possession of this



property went virtually undisturbed until 2003. In 2003, Mr. Brown from ATCO entered onto the Scotts' property relative to some tree tops from ATCO's cut falling onto the Scotts' property in another area, which was known as the Jones place. He was met by Herman Scott and a surveyor for the Scotts, Richard Logan. (T. 334). Mr. Logan stated to Mr. Brown that ATCO did not own the twenty acres, that they did not cut the timber and that any blue lines they saw were painted by the hunting club members. (T. 335). Contrary to Mr. Logan's statement, Mr. Brown had personal knowledge that the blue paint was in fact ATCO's and personally verified that timber had been cut from the twenty acres. (T. 336). Four years after this conversation, a member of the Linwood Hunting Club received a note in his deer stand which claimed that he was trespassing. He notified ATCO and was told by ATCO to continue to hunt the property. (T. 336). Subsequently, the attorney for ATCO sent a letter to the Scotts informing them that ATCO was the owner of the property. (Trial Ex. 8). In 2010, ATCO was cutting timber and Mr. Brown, along with another ATCO forester, was confronted by Herman Scott and another man who demanded they stop cutting timber. (T. 350) After this confrontation, the complaint and trial of this matter ensued.

#### **IV. SUMMARY OF THE ARGUMENT**

The Appellee, ATCO, would respectfully submit that the Chancellor was correct in his finding that ATCO proved it acquired the disputed tract by adverse possession. Since 1969, ATCO has exercised open and visible possession of this tract by painting the boundary lines "ATCO blue;" by harvesting and cutting timber on the tract; by operating TSI on the tract; and by leasing the tract to Linwood Hunting Club. The facts of this case unequivocally support that ATCO met each element of adverse possession as outlined by this Court in a number of cases

and in Mississippi Code Annotated Section 15-1-13. At trial, the Scotts did not offer any credible proof to refute ATCO's claims, and, in fact, a close reading of their Appellants' brief reveals that the arguments contained therein actually *support* ATCO's position.

Accordingly, ATCO prays that this Court affirm the finding of the Chancellor that it is the owner of the disputed twenty acres.

#### **V. STANDARD OF REVIEW**

"This Court employs a limited standard of review when reviewing the decisions of a chancellor. The chancellor's determinations will only be reversed when they were manifestly wrong, clearly erroneous, or when the chancellor applies an incorrect legal standard. Generally, a finding that proof was sufficient to sustain an adverse-possession claim is finding of fact and requires the application of the substantial-evidence/manifest-error rule." *Greenwood v. Young*, 80 So.3d 140, 145 (Miss. Ct. App. 2012) (internal citations omitted). In adverse possession matters, "[t]he chancellor must find that the plaintiffs proved each element of their claim by clear and convincing evidence." *Roberts v. Young's Creek Inv., Inc.*, 118 So.3d 665, 669 (Miss. Ct. App. 2013).

#### **VI. ARGUMENT**

**The Chancery Court did not err in determining that Anderson-Tully Company proved that the property in dispute was titled to and owned by Anderson-Tully Company under the theory of adverse possession.**

Mississippi Code Annotated Section 15-1-3(1) governs claims of adverse possession, stating,

Ten (10) years' actual adverse possession by any person claiming to be the owner for that time of any land, uninterruptedly continued for ten (10) years by occupancy, descent, conveyance, or otherwise, in whatever way such occupancy

may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title, saving to persons under the disability of minority or unsoundness of mind the right to sue within ten (10) years after the removal of such disability, as provided in Section 15-1-7. . . .

Additionally, case law on the elements of proving an adverse possession claim is legion:

“for possession to be adverse it must be (1) under claim of ownership; (2) actual or hostile; (3) open, notorious, and visible; (4) continuous and uninterrupted for a period of ten years; (5) exclusive; and (6) peaceful.” *Roberts*, 118 So.3d at 669 (citing *Blackburn v. Wong*, 904 So.2d 134, 136 (Miss.2004) (citing *Thornhill v. Caroline Hunt Trust Estate*, 594 So.2d 1150, 1152–53 (Miss.1992))).

For purposes of this honorable Court’s review, ATCO will address each one of these elements separately.

*1. Under claim of ownership.*

“Under the claim-of-ownership element of adverse possession, the chancellor must determine whether the purported adverse possessor's actions were sufficient to ‘fly a flag over the property’ and put the actual owners on notice that the property was “being held under an adverse claim of ownership.” *Id.* (citations omitted). Furthermore, “the chancellor must look to the quality and not the quantity of the acts indicative of possession. *Id.* “Possessory acts necessary to establish a claim of adverse possession may vary with the characteristics of the land,” and “adverse possession of ‘wild’ or unimproved lands may be established by evidence of acts that would be wholly insufficient in the case of improved or developed lands.” *Apperson v. White*, 950 So.2d 1113, 1117 (Miss. Ct. App. 2007) (citing *Kayser v. Dixon*, 309 So.2d 526, 529 (Miss.1975)).

After ATCO was issued a deed which it maintained included the twenty disputed acres, ATCO followed long-established company policy by painting its boundary lines blue. (T. 294; 324). The old fence line was already there and had existed, according to Mr. Nations, since the early 1930's . (T. 218).<sup>7</sup> By painting and maintaining these lines, ATCO gave continued public notice of its ownership of the property. After establishing through confirmation its boundaries, ATCO proceeded multiple times to: harvest timber on the property, wherein they actually crossed the Scott's property; conduct TSI on the property; to cut timber on the property; and to grant hunting licenses on the property.

The Scotts put forth testimony that they paid the taxes on the disputed property, but this does not give them a possessory claim. (T. 8). The payment of taxes alone is "simply one incident to possession," and this factor is not conclusive of ownership. *See Nosser v. B.P.*

*Buford*, 852 So.2d 57, 61 (Miss. Ct. App. 2002); *See also Buford v. Logue*, 832 So.2d 594, 602 (Miss. Ct. App. 2002).

Ample testimony was given that ATCO committed multiple possessory acts relative to the nature of the land, and these acts clearly "flew the flag" of ATCO's ownership.

## 2. *Actual or Hostile*

"Possession is hostile and adverse when the adverse possessor intends to claim title notwithstanding that the claim is made under a mistaken belief that the land is within the calls of

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<sup>7</sup>Based on the evidence, adverse possession had already taken place so that in fact, the twenty acres were actually owned by ATCO's predecessors in title. *See Webb v. Drewrey*, 4 So.3d 1078, 1083 (Miss. Ct. App. 2009) (citing *Wicker v. Harvey*, 937 So.2d 983, 993 (Miss. Ct. App. 2006) (citing *Crowder v. Neal*, 100 Miss. 730, 736, 57 So. 1, 3 (1911)) ("Mississippi law is clear that adverse possession can be established by the actions of a party's predecessors in title."))

the possessor's deed. The adverse possessor must also possess the property without permission, because permission defeats any claim of adverse possession.” *Roberts*, 118 So.3d at 670. (citations omitted).

ATCO was issued the deed for the Hollywood Tract in 1969. It included portions of sections 29 and 30. While there was not a specific reference to section 28, which included the twenty acres, ATCO understood and believed it owned the twenty acres as a part of the Hollywood Tract based on the “catch-all” portion of the legal description as well as the reference to the Burkhardt survey which it relied on; and ATCO took immediate possession of the twenty acres upon receipt of the deed. ATCO was not on the property by anyone’s permission, but treated the property as its own by deed, and proceeded to move forward with its timber activities and hunting licenses on the property.

Consistent with the holdings of this Court, the chancellor correctly found that ATCO’s possession of the property was hostile and adverse to the Scotts “by its marking, managing and harvesting the timber uninterrupted from 1969 to 2010 when they last cut the timber.” (C.P. 160).

### 3. *Open, Notorious and Visible*

“Mere possession does not satisfy the requirement that possession be open, notorious, and visible. Rather, an adverse possessor “must unfurl his flag on the land, and keep it flying, so that the (actual) owner may see, and if he will, that an enemy has invaded his domains, and planted the standard of conquest.” *Wicker v. Harvey*, 937 So.2d 983, 994 (Miss. Ct. App. 2006) (citations omitted).

The fence, dividing the functions of both parties on their respective properties, was a clear and visible boundary line to the parties, as well as to the public. *See Hill v. Johnson*, 27

So.3d 426, 432 (Miss. Ct. App. 2009).

Notwithstanding, the aforementioned painting of the lines, the harvesting and cutting of the timber, TSI and the hunting licenses were all done within the visibility of the Scotts or to anyone near the Hollywood Tract. Not only did the harvesting of the timber on the Hollywood Tract take up to a month, ATCO had to access its property through the Scotts' property in order to do so. (T. 348-49). Mr. Nations testified that when the timber cutting took place, it could be heard "a half a mile." Mr. Brown testified that when he was confronted in 2003 by Mr. Scott, he drove the twenty acres to verify that the timber cutting had taken place, and stated it was "clearly apparent" it had. (T. 335). Cutting of timber is not something ATCO could "hide" from adjoining land owners. Nor was ATCO's multiple harvests and cuttings something that could be labeled as sporadic use of the land.

Lastly, ATCO gave it licensee, the Linwood Hunting Club, permission to hunt on its property, and this included the twenty acres. (T. 343). The plats of the property, which were a part of the license agreements delivered to the hunting club, clearly showed the twenty acres as part of the tract being leased. (Trial Ex. 32). The members of the hunting club knew this property was being leased from ATCO, and the Scotts knew this property was being leased by the hunting club from ATCO. (T. 272-73).

ATCO's presence on the land and possessory acts thereon were clearly open, notorious and visible within the purview of this Court's definition.

4. *Continuous and uninterrupted for a period of ten years.*

Pursuant to Mississippi Code Annotated Section 15-1-13(1),

Ten (10) years' actual adverse possession by any person claiming to be the owner

for that time of any land, uninterruptedly continued for ten (10) years by occupancy, descent, conveyance, or otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title. . . .

ATCO was deeded the Hollywood property in 1969, and upon acquisition of this property, “staked its claim” by painting blue lines consistent with the already existing fence boundary. (T. 295-96). ATCO then proceeded to conduct the above-mentioned timber activities as the owner of the property through the 1969 deed. The Court, citing two early cases, addressed an analogous issue in *Pittman v. Simmons*, 408 So.2d 1384, 1386 (Miss. 1982):

In the case of *Metcalf v. McCutchen*, 60 Miss. 145, and *Jones v. Gaddis*, 67 Miss. 761, 7 So. 489, the Court held that even though a party has claimed the land in controversy as being within the calls of his deed and has relied upon his deed as the foundation of his claim, when in fact the land was not within the calls of his deed, yet, if he has occupied the land for the statutory period under the claim that it was his own and was embraced within the calls of his deed, he is entitled to recover on the ground of adverse possession; that it is the fact of adverse possession under the claim of right for the statutory period that establishes title. In its opinion in the Metcalfe case, the Court said: “We adopt the views of those courts which hold that that possession is adverse in which the holder claims, and intends to claim title, without regard to the fact that the possession and claim is held and made under an honest, but mistaken, belief that the land is within the calls of his deed. It is the fact that possession is held, and that title is claimed, which makes it adverse possession, or claim, or both, though they may have resulted from a mistake; but it is their existence and not their cause that the law considers, and existing, they constitute adverse possession.

The deed granting ATCO title included the Hollywood Tract which ATCO had basis to understand and believe included the twenty acres. Believing it was the owner, ATCO proceeded with its normal course-of-business activities beginning in 1969. The indirect notices by the Scotts in 2003 and 2007, and the actual notice in 2010 did nothing to interrupt its possession. It is clear ATCO’s possession meets the statutorily required ten years.

5. *Exclusive Use*

“To satisfy the element of exclusivity, ‘the claimant’s conduct must afford an unequivocal indication that he is exercising dominion of a sole owner.’ “Exclusive use” does not mean that no one else uses the property. Rather, exclusive use indicates a right to use the land above other members of the general public.” *Greenwood*, 80 So.3d at 149 (Miss. Ct. App. 2012) (citing *Stone v. Lea Brent Family Invs., L.P.*, 998 So.2d 448, 455 (Miss. Ct. App. 2008)).

On the subject property, there was a fence which served as a boundary line, with ATCO’s property on the east side and the Scott’s property on the west. Testimony was given that the Scotts cut timber on their west side of the property fence line and did no cutting on the east. (T. 225). The Scotts, nor anyone else for that matter, did not utilize the property on ATCO’s side of the fence, and that area was utilized exclusively by ATCO and the Linwood Hunting Club with permission from ATCO. (T. 219). As discussed above, the activities involved with ATCO’s timber business and their grant of hunting licenses to Linwood were clearly consistent with an exclusive claim to the right to use the property.

6. *Peaceful*

“The mere existence of a dispute over the use of land does not present an obstacle to satisfy the element of peaceful use. Simple disputes often arise between neighboring landowners, but do not rise to the level of destroying the peaceful existence between them.” *Hill*, 27 So.3d at 432 (citing *Dieck v. Landry*, 796 So.2d 1004, 1009 (Miss.2001) (internal citations omitted)).

There was no evidence presented by the Scotts that they had not peacefully co-existed with ATCO until at least 2003, and more actually 2010. In 2003, ATCO was confronted by Herman Scott and his surveyor, Mr. Logan, who stated that ATCO did not own the property. However, ATCO continued to proceed in their normal course of business until a member of the



Linwood Hunting Club received a notice and ATCO was forced to send the Scotts a letter from their attorney. (T. 59; Trial Ex. 8). The Scotts acknowledged knowing ATCO's licensee, Linwood Hunting Club, always used the property up to this fence line and acknowledged receiving the letter but did nothing. (T. 58-59). There was no need for ATCO to do anything other than resume its normal business on the land until it received the notice of a suit in 2010.

7. *Summary*

The evidence presented was overwhelmingly clear that ATCO exercised peaceful possession of this property well over the required ten years. Confirmation of the factual and legal conclusion that ATCO owns the twenty acres cannot be better demonstrated than from the testimony of the Scotts' own expert, called in an effort to support the Scotts' claim for damages. Thomas Middleton, a registered forester, was hired by the Scotts to determine the trees that were cut based on stumps existing. It ended up, however, that he confirmed ATCO's claimed boundary of the 20 acres. Mr. Middleton has the experience and expertise to see for himself that the fence along the western line (the boundary claimed by ATCO) had been in existence for more than 20 or 30 years and that what he recognized himself as the well-known "blue line" paint of ATCO had been placed along that line for a number of years, at least two times. (T. 196-200).

It is clear that ATCO has met each part of this Court's test for adverse possession. This Court has held,

where a person enters into the possession of land under the belief that it lies within the calls of his title deed, and occupies it adversely against the world for the statutory period under such belief, he will acquire title thereto, although it is shown later that the land does not lie within the calls of his deed, but lies within the calls of the deed of his adversary, who has paid taxes thereon during the entire period of the adverse possession. . . .

*Pittman*, 408 So.2d at 1386 -1387 (citations omitted). In 1969, ATCO was issued a deed for what it believed included (and truly did) the disputed twenty acres and proceeded to visibly and uninterruptedly operate under that belief until 2010 when this action was commenced. It is clear that title to this property is owned by and should be vested in ATCO.

## **VII. CONCLUSION**

After a two-day trial and consideration of all of the evidence before the chancery court, the Chancellor in this matter offered a well- reasoned opinion which ATCO respectfully submits did not apply an erroneous legal standard, was not arbitrary and capricious nor manifestly in error. This Honorable Court has a long-established six element test for adverse possession, and ATCO presented clear and convincing evidence in support of each element. The Chancellor's findings were supported by this evidence.

Therefore, ATCO respectfully requests this Court affirm the decision of the Chancellor that ATCO is the record owner and title holder to the disputed twenty acres in Section 28, Jefferson County, Mississippi, and that the Scott's Complaint should be dismissed with prejudice. Although not pled by the Scotts, out of an abundance of caution, ATCO also respectfully requests that this Court affirm the Chancellor's denial of the Scotts' Motion for New Trial, Motion for Reconsideration and Motion for Hearing.

Respectfully submitted,

ANDERSON-TULLY LUMBER COMPANY

BY: /s/ Lauren Roberts Cappaert  
LANDMAN TELLER, JR.  
LAUREN ROBERTS CAPPAERT

OF COUNSEL:

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### CERTIFICATE OF SERVICE

I, Lauren Roberts Cappaert, do hereby certify that I have this day mailed by United States Mail, postage prepaid, and sent by electronic filing submission a copy of the foregoing **Brief** to:

Honorable George Ward  
Chancery Court Judge  
Post Office Box 1144  
Natchez, MS 39121-1144

Patricia Catchings, Esq.  
P.O. Box 20121  
Jackson, MS 39289  
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Michael Keyton, Esq.  
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Port Gibson, MS 39150  
Attorney for Appellants

This the 3 day of March, 2014.

/s/ Lauren Roberts Cappaert  
LAUREN ROBERTS CAPPAERT

### **CERTIFICATE OF ELECTRONIC FILING**

I, Lauren Roberts Cappaert, do hereby certify that this Brief has been filed electronically in compliance with Mississippi Rule of Appellate Procedure 25. Any electronic transmission fee will be promptly paid.

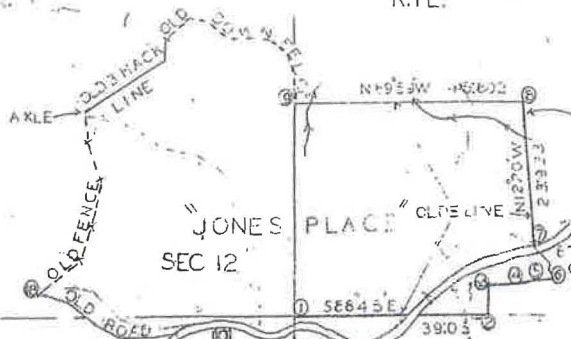
This the 3 day of March, 2014.

/s/ Lauren Roberts Cappaert  
LAUREN ROBERTS CAPPAERT

R.I.E.

MEANDER FROM 1 TO 2  
FENCE IN SEC 12

NORTH 1320  
N80°02'W 1427  
S6°09'W 2060  
S76°19'W 2536  
N89°50'W 41257  
N69°40'W 5601  
N45°33'W 7540  
N80°23'W 2179  
N71°16'W 3640  
N85°01'W 1583  
TO 8



SEC 13

MEANDER FROM 2 TO 6

2 TO 6 NOC 5000  
3 TO 4 N84°E 6900  
4 TO 5 N61°E 3000  
5 TO 6 N80°E 3250  
N105°58'W 1020  
TO N111°4'E 1190  
N194°2'W 3920

JONES PLACE ACREAGE  
BY COMPUTATION  
EXCEPT SEC 12 BY  
PLANIMETER FROM  
AERIAL PHOTO.

SEC. 12 SEC. 13 SEC. 25

TOTAL 205.9 194.2 81.67

POWERLINE 20 .96

CEMETARY 0.5 .56

ROAD 4.0 261

NET 203.9 189.7 77.00

TOTAL 471.22

SEC 24

MEANDER FROM IRON  
SOUTH ON ROAD TO IRON  
S 28°49'E 11920  
S 20°29'E 4683  
S 38°15'E 8699  
S 53°31'E 41232  
S 00°30'W 0308

NORTH

DECL.

6°05'EAST

FROM TRI-STA

GOLE 4.5 MILES

S.S.E.

SCALE 1" = 20 CHAIN

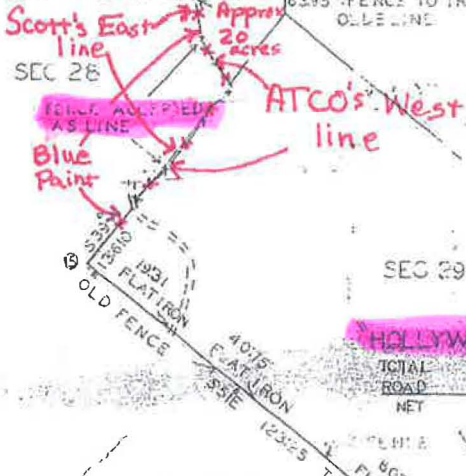
ALL DISTANCES IN

CHAINS.

CORNER	WITNESS	BEARING	DISTANCE
FOUND IRON	12" Y. POPLAR	N53°07'E	13 X 0.378
① SET	9" WATER OAK	S30°28'E	24 X 0.554
ANGLE IRON	6" HACKBERRY	S 78°33'W	25 X 0.640
	7" HICLOCUST	N33° W	12 X 0.110
② SET	16" S. GUM	N40°00'W	13 X 0.049
FLAT IRON	14" LYNN	S36°00'W	24 X 0.498
	7" S. GUM	N48°00'E	13 X 0.512
	5 SHUMARD OAK	S 9°00'E	24 X 0.510
	9" CHERRYBARK	N23°05'E	11 X 0.256
③ SET	18" S. GUM	N83°45'E	11 X 0.274
FLAT IRON	8" S. GUM	S 06°23'E	11 X 0.357
	9" WHITE OAK	N12°24'E	11 X 0.246
④ SET	9" HICKORY	S67°41'E	11 X 0.349
IRON BAR	10" LYNN	S26°08'W	11 X 0.126
	7" S. GUM	S35°56'E	11 X 0.428
⑤ SET	10" HICKORY	S74°23'E	11 X 0.113
IRON BAR	10" EL M	N00°23'W	11 X 0.554
	8" PERSIMMON	N65°49'W	11 X 0.891
⑥ SET	10" S. GUM	N7°17'E	11 X 0.443
FLAT IRON	6" Y. POPLAR	S16°46'E	11 X 0.795
⑦ SET	14" CHERRYBARK	N24°50'W	11 X 0.470
FLAT IRON	12" CHERRYBARK	N86°54'W	11 X 0.230
	14" HICKORY	N87°35'W	11 X 0.230
SET FLAT	19" CHERRYBARK	N25°00'W	11 X 0.416
⑧ IRON BY	38" WATER OAK	N69°34'W	11 X 0.300
FOUND IRON	14" LYNN	S64°43'E	11 X 0.350
	6" HICKORY	N52°54'E	11 X 0.250
⑨ FOUND	6" S. GUM	S56°56'W	11 X 0.238
OLD AXLE	6" HICKORY	N35°51'W	11 X 0.167
	6" BLOCUST	N01°22'E	11 X 0.246
⑩ SET	1" CEDAR	S21°29'E	11 X 0.270
FLAT IRON	6" WATER OAK	S74°24'W	11 X 0.346
⑪ SET	18" EL M	S66°56'E	11 X 0.278
IRON BAR	4" WATER OAK	S27°11'W	11 X 0.198
	16" S. GUM	S28°46'E	11 X 0.220
⑫ SET	7" BLUE BEECH	S77°25'W	11 X 0.212
FLAT IRON	14" WATER OAK	S56°46'E	11 X 0.115
	10" BLUE BEECH	S52°31'W	11 X 0.204
⑬ SET	13" WATER OAK	N66°05'W	11 X 0.166
IRON ROD	16" SHUMARD OAK	N14°06'W	11 X 0.357
	4" HICKORY	S88°37'W	11 X 0.264
⑭ SET	7" HICKORY	N56°22'E	11 X 0.018
FLAT IRON	12" SHUMARD OAK	S86°41'E	11 X 0.780
	16" S. GUM	N76°01'W	11 X 0.430
	4" ASH	S12°35'E	11 X 0.065
⑮ SET	6" HICKORY	S18°42'E	11 X 0.240
FLAT IRON	14" WATER OAK	S31°20'W	11 X 0.460
	10" S. GUM	N70°42'W	11 X 0.136
⑯ SET	5" EL M	N10°56'W	11 X 0.473
FLAT IRON	11" SYCAMORE	S11°21'E	11 X 0.503
⑰	2" S. GUM	N57°41'E	11 X 0.010

SEC 25

SCHOOL SECTION 24 LINES  
RUN BY H. L. LARBY, H. CLARK  
CIVIL ENGINEER, MCCOMB,  
MISS., FEBRUARY, 1969.



HOLLYWOOD ACREAGE BY  
COMPUTATION FROM SURVEY EXCEPT  
PART IN SEC. 26 (132A) BY PLANIMETER.  
ACREAGE SOUTH OF CREEK BY  
COMPUTATION IS.  
TOTAL 235.31  
ROAD 4.00  
NET 231.31

MAP SHOWING SURVEY OF  
ANDERSON-TULLY COMPANY'S  
COMMON ESTATE TRACTS IN  
JEFFERSON CO., MISS.  
JONES PLACE-HOLLYWOOD

FIELD BOOK E.C.B. CLAIM XII PAGES 12-109.

SURVEYED NOV 68- FEB 69 BY

E.C. BURKHARDT, L.S. 1073

FOR OFFICE USE ONLY  
DO NOT REMOVE

MEANDER FROM CREEK TO THE  
OF THE CREEK  
S82°1'E 0.557  
S12°23'E 1.378  
S23°55'E 6.560  
S23°55'E 8.354  
S 23°49'E 10900  
S 24°04'E 6578  
S 25°31'E 5035  
S39°28'E 3792