

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CAUSE NO. NO. 2015-CA-01069

CATHY DORIS L. GRANTHAM, APPELLANT

VS.

OLD LIBERTY CEMETERY ASSOCIATION, APPELLEE

**APPEAL FROM THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT
OF CARROLL COUNTY, MISSISSIPPI**

BRIEF OF APPELLANT

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ORAL ARGUMENT IS NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for the Appellant, Cathy Doris L. Grantham, 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) Rita L. Deloach,
1646 CR 93
McCarley, Mississippi, 38943
- 2) Michael Deloach,
71 CR 394
Carrollton, Mississippi, 38917 .
- 3) Kenneth Deloach
1646 CR 93
McCarley, Mississippi, 38943
- 4) Brenda Bankston
4140 CR 286
Grenada, Mississippi, 38901
- 5) Cecil Ann Blake
22666 CR 93
McCarley, Mississippi, 38943
- 6) Bruce Heath
1189 CR 101
Carrollton, Mississippi, 38917

- 7) Roger Lott
1005 Windsor Rd.
Grenada, Mississippi, 38901

RESPECTFULLY SUBMITTED, this the _____ day of May, 2016.

JAMES H. POWELL, III
(MS BAR NO. 4464)
ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES

- Issue 1:** **The Chancellor erroneously failed to award Cathy Doris L. Grantham a prescriptive easement over the road running adjacent to the Southern boundary line of the Cemetery.**
- Issue 2:** **The Chancellor erroneously failed to find that the actions of Rita Deloach as an agent for the appellee, Old Liberty Cemetery Association rose to the level malice necessary to support the counter-claim of Cathy Grantham for slander of title.**

STATEMENT OF THE CASE

A. Nature of Case, Course of Proceedings and Disposition by Trial Court

Old Liberty Cemetery Association, an unincorporated association (hereinafter “Association”) located in Carroll County, Mississippi, on July 1, 2013 filed a Complaint (Cause No. 2013-0057 F) in the Chancery Court of the First Judicial District of Carroll County against the Appellant, Cathy Doris L. Grantham (hereinafter “Cathy”) and all persons claiming any legal or equitable interest in the property described in said Complaint.

Cathy also filed a Complaint¹ against the Association and others including individual members of the Association and Deacons of Liberty Baptist Church, which sought to confirm her title to the road running lying North of a fence which the Association claimed constituted the Southern boundary line of a cemetery referred to as the “Old Liberty Cemetery “or the “Lott Cemetery”. Cathy’s Complaint also sought damages against the Association and the individual defendants named therein for slander of title. Chancellor Fenwick summarized the relief sought by Cathy in her Complaint at the beginning of the trial in this cause. (T pp. 8-9)

¹ Cathy’s Complaint and the Association’s Answer were not made a part of the Clerk’s Record in this cause.

The two causes were subsequently consolidated for trial by entry of an Agreed Order ®. p. 47). They were tried before Chancellor Fenwick on the 26th and 27th of August and the 5th of September, 2014. (R. p. 129) (T p.1).²

Chancellor Fenwick’s “Opinion of the Court” (R. pp. 118-128) was filed on December 15, 2014 and “Judgment “ incorporating the Opinion of the Court as exhibit “A” thereto was entered on January 12, 2015 (R. pp. 129 The Judgment confirmed the title to that portion of a 1.55 acre tract described in “Exhibit B” to the opinion and lying within the fences showing on said “Exhibit B” as being vested in the Association; granted the Association a non-exclusive easement for ingress and egress to the cemetery over land owned by Cathy (R. P. 130) ; confirmed title of Cathy in that portion of land lying East shown on the plat in “Exhibit B” which lies East of the cemetery fence line, between the fence and CR 93 (R. P. 130); set aside an instrument filed by Cathy in the Land Deed Records of the First Judicial District of Carroll County at Deed Book 148 page 380 titled “Instrument to Clarify Description and Location of the Lott Cemetery in Carroll County, Mississippi and Providing Reasonable Access Thereto” (R. pp. 130, 131); and dismissed the respective claims of slander of title of the parties against each other. ((R. p. 130)

Cathy filed on January 22, 2015 a “Motion for New Trial or in the Alternative to Alter or Amend Judgment. (R. p. 131). In her motion Cathy alleged the Chancellor erred by failing to award her a non exclusive easement over the road on the south end of the cemetery for access to her property lying south and west of the cemetery fences and by dismissing her slander of title

² References with the designation “R” and the page numbers cited related to the designation “R” refer to pages compiled by the Clerk as the “Appeal Record” in this case. References designated “T” and the pages following relate to pages within the transcript of the trial.

claim as to defendant Rita DeLoach, with respect to her real property included in the Association's complaint which was outside of the fenced east boundary of the cemetery. (R. pp. 146-147).

The Court heard said motion on June 9, 2015 and on July 2, 2015 entered an Order denying Cathy's Motion. On July 14, Cathy filed her Notice of Appeal in this cause. (R. p. 154).

In this appeal Cathy does not request and has never requested title to the actual burial ground. Her Complaint, in both the confirmation of title portion and her slander of title claim related solely to the access road north of the southern fence line lying property between the two metal gates.. She has decided not to appeal the determination of the Court of the that the fence lying south the access road is the cemetery's south boundary, but does appeal the denial to her of a non-exclusive easement over the road to access her property. She also appeals the denial of her slander of title claim based on, Rita Deloach (hereinafter "Rita") in her capacity as an agent for the association.

B. Facts Relevant to Issues in Cathy's Appeal

I. Cathy's Claim for Easement over Road on South End of Cemetery

Joe Sutherland, a civil engineer and surveyor performed surveys of the disputed area for both Cathy and Rita Deloach (hereinafter "Rita"). From the surveys introduced in evidence in this cause, his field survey for Cathy was done on June 14, 2012 and survey plat was prepared on September 18, 2012 (Ex. 2 T. p. 419). He prepared a plat for Rita based on his field survey notes from Cathy's survey and a "walking trip to the cemetery" on March 20, 2013. (Ex. 1) (T. pp. 30, 418-19)

His plat for Rita, (Ex. 1) included land outside the fence located on the east side of the

cemetery (T pp. 29, 30) because Rita directed him to make the County Road the East boundary of the property in her survey. Rita was the only person Mr. Sutherland dealt with in preparing Rita's plat (T. pp. 419-20) .

In the plat he prepared for Cathy, he described Cathy as trying to be "fair and reasonable with what she wanted included in the cemetery". (T p. 421) Mr. Sutherland acknowledged that the southern boundary line of the cemetery as depicted on Rita's plat, (Ex. 1) contained a wire gap on the east side just west of the entrance gate and that feeding troughs and concrete pads are located at the cattle gap just south of the gap. As you move westerly along said fence on the southern boundary a second metal gate exists opening into an old logging trail. It was clear to Mr. Sutherland that both the gap and the gate were located on the fence to provide access from the road just north of said fence , to the person who owned the land lying south and west of the fence. (T. pp. 31-32) Photos of each of these gates were introduced into evidence by Cathy during cross examination of Mr. Sutherland as collective exhibit "19"³.

The Court in its "Opinion of the Court" (R. pp. 118-128 at page 122) found it to be undisputed that Cathy owned record title to all contiguous land surrounding the cemetery.

The starting point for the description in the survey Sutherland conducted for Cathy (Exhibit 2) was a Cedar tree containing remnants of an old fence consisting of three strands of barbed wire running perpendicular to the County Road in a southwesterly direction toward the gate on the west end of the fence used as the southern boundary for Rita's survey and skewed along the same angle as the access road. (T. p. 53)

Mr. Sutherland, knew of no explanation other than the prior existence of a fence to

³Exhibit 19 is not present in the Chancery Clerk's copy of the records of this case. It also appears that exhibit "18" is missing.

explain the stobs of wire in the Cedar tree heading in a southwesterly direction. (T. pp. 32, 35, 56) No grave sites are located at any point south of the line which he surveyed for Cathy (Ex. 2) which begins at the Cedar tree containing old wire used as the point of beginning of her description and runs to an Oak tree where the gate to the logging trail on Cathy's property is situated. (T. p. 30). Kenneth Deloach, one of the defendants in Cathy's Complaint also confirmed that no graves existed in the area claimed by Cathy. (T. p. 72)

Mr. Deloach further admitted, that Johnny Cecil Lott, Cathy's father and her predecessor in title, accessed the property, lying south and west of the cemetery through the gap and gate on the southern fence line. (T. p. 73) Roger Lott, another person named as a defendant in Cathy's Complaint testified that Cathy's father utilized the road on the south end to access and the gap in the south fence to feed his cows stating that "he pulled his truck right in there" to do so (T. p. 146, 156). He also testified that Cathy's father actually built the fence utilized as the West boundary in both surveys, because he was using the logging trail beginning west of the gate on at the southern fence boundary in his farming operations. (T. p. 147)

Michael Deloach was called by the Association as a witness and he testified that prior to his death, Cathy's father would enter through the gate on the County Road and go through the gate on the access road which is West of the Gate off the County Road entrance for purposes of access to his pasture and pine trees. He said Cathy's father "used the gate to get on his place". (T. pp 256, 257) He also testified that in the forty (40) years he has been going to the cemetery regularly he had never seen any person come through the west gate to access to the cemetery other than Cathy and her husband. (T. p. 257, 257). He acknowledges the gap in the south fence was there for the use of Cathy's father exclusively and that Cathy's father used both the gate and the gap for his convenience to get to his property. (T. p. 259, 266)

From her birth in 1956 until 1974 when she went to college Cathy lived in her parents home which is about one-quarter mile from the cemetery. During that period she recalled going to the cemetery numerous times (T. p. 526) Cathy recalled that her father used the gap on the road in his farming by taking feed and hay through to his cattle; taking cattle that needed to be removed because of calving or illness through that gap and that no person other than her father used the road south of the grave site on a regular basis (T. p. 529-60). During Cathy's childhood there were gaps instead of gates from the County Road into the access road and at the point where the access road the joined the logging trail. She stated that her father built both of them. (T. p. 531). Her father placed the gaps in the South fence line without permission from anyone, because he owned the portion of the property upon which the access road was situated. (T. pp. 543, 565)

Cathy also testified that the line, beginning at the Cedar tree with the old wire in it, was utilized as a starting point for the survey of the cemetery by Joe Sutherland, because of her recollection of a fence that existed in that area during her childhood. She recalled having to step over the fence to get to the actual burial sites on the property (T. p. 529) .

ii. Cathy's Claim for Slander of Title

Chancellor Fenwick, in his "Opinion of the Court" in this cause recognized that a bitter family dispute existed between Rita and Cathy (R. p. 118). According to Rita, her relationship with Cathy was ok until their father, had an accident in June, 2011 which led to his death on August 27, 2011 . (T. Pp. 334-35, 411).

During her testimony Rita demonstrated her bitterness and malice toward Cathy on numerous occasions including the following:

Although the land where the cemetery is situated is surrounded by the property their

father gave Cathy, Rita refused to acknowledge that fact, by claiming that Cathy only owned land on two (2) sides of the cemetery (T. p. 335);

She continued to claim the Association owned the land East of the fence on the East side of the cemetery even though her attorneys had repeatedly stated they were not making that claim. (T. p. 336);

While she denied telling Joe Sutherland to survey to the right of way on the County Road for the East line, she insisted that the cemetery came all the way to the road; (T. p. 337, 339,368, 370);

She claimed that Cathy's husband and son broke into the residence house of their father and claimed at trial that she could not remember whether she called law enforcement to respond to the alleged burglary (T. p. 343);

She was upset because Cathy placed a "Posted" sign on the property she inherited from her father (T. p. 345);

In the three years since her father's death she told numerous people, that Cathy was crazy, and that she carried a gun, including the attorney for Cathy after the litigation started in this cause and the said attorney's wife during the trial of this cause (T. pp. 345-46);

While her father was in the hospital dying from his June, 2011 accident, she falsely reported to the nurses that Cathy had a gun in her possession, based on only her perception of Cathy not "acting .. like a normal person should act when your father is dying" (T. p. 347-48);

She was upset that Cathy, grieving over the loss of her father did not want him taken off life support because she wanted to visit with him a little longer; (T. p. 347);

Rita told people that Cathy stopped a historical marker from being placed in the cemetery when she knew that her application for the marker was denied because the cemetery did not meet

the required qualifications of the Department of Archives and History to have the marker placed their (T. pp. 379-383, pp. 184-87);

She inferred during her testimony that Cathy cut chains, let cows out in the road and was responsible for some other unnamed things that happened; (T. pp. 383 -84);

During a controlled burn of Cathy's pine plantation, Rita called David Green, the Forrester supervising the burn, and Forestry service employees Mark Williams and Clark King to claim she was illegally burning and the burning caused her phone service to go out; (T. pp. 385 - 86);

During the trial, the Chancellor directed questions to Rita concerning whether she was placed on notice of any issue concerning access to the cemetery Rita responded with allegations against Cathy about taking money from her father and Cathy allegedly limiting Rita's time to see her father before he died; (T. pp. 411-12);

Michael Deloach accused Cathy and her husband Howard of removing sandstones from the cemetery and using them to decorate his yard. He alleged that they did this while mowing the cemetery. Michael however admitted that he never saw Cathy or Howard mow the cemetery or take any stones and that he based his testimony on calls from his aunt and uncle, Rita and Kenneth Deloach; (T. pp. 273,276)

SUMMARY OF THE ARGUMENT

Cathy claims that the Judgment entered in Chancery Court of the First Judicial District of Carroll County, Mississippi was manifestly erroneous based on the evidence in the following particulars:

1. Sufficient evidence was introduced during the trial to prove that during his lifetime, Johnny Cecil Lott, the father of and predecessor in title to Cathy, performed acts of ownership of

the access road to the Old Liberty Cemetery, which were sufficiently adverse to the ownership of the Liberty Baptist Church of the access road to, establish the elements necessary for him to acquire a prescriptive easement over the cemetery access road. The Chancellor's failure to award Cathy a prescriptive easement over the access road was therefore, manifestly wrong and/or clearly was erroneous.

2. Rita actively lobbied Liberty Baptist Church in an attempt to have the Church convey its title to the Old Liberty Cemetery. The Church membership wanted to avoid spending any Church funds for upkeep of the Cemetery and agreed to the conveyance. The Old Liberty Cemetery Association was quickly formed. Rita contacted Joe Sutherland, the licensed surveyor who had previously a survey of the cemetery for Cathy, and instructed him on where she wanted the lines of the survey to run. In her instructions she knowingly had the east side of the survey expanded outside of the cemetery fence to include land that she knew was owned by Cathy. She then had her attorney prepare a deed for the conveyance of the cemetery to the Association, using the erroneous survey description, met the Trustees of the Church at the Courthouse in Grenada, Mississippi and had them execute the fraudulent instrument, which she subsequently filed for record in the land deed records of the First Judicial District of Carroll County, Mississippi.

Based on Rita's actions taken on behalf of the Association, a presumption of malice was created, but the evidence introduced concerning Rita's relationship with Cathy over the period between their father's death and the filing of this instrument clearly exhibited actual malice toward Cathy, warranting the entry of a Judgment in favor of Cathy on her slander of title claim against the Association.

The Chancellor's Judgment should be reversed as to each of these issues.

ARGUMENT

Issue 1: The Chancellor erroneously failed to award Cathy Doris L. Grantham a prescriptive easement over the road running adjacent to the Southern boundary line of the Cemetery.

In her complaint filed in this cause she sought a confirmation of title in only that portion of the claimed cemetery tract which is south of the southern boundary line of the survey Joe Sutherland performed for her. (Ex. 2) After the entry of the Court's "Judgment" (R. pp. 129-145) she abandoned her claim for a confirmation of title to that portion, and sought in her "Motion for New Trial or in the Alternative, to Alter or Amend Judgment" (R. pp. 146-148) only a non-exclusive prescriptive easement along the cemetery access road lying between the two gates which are now part of the cemetery boundaries pursuant to the "Judgment".

After a hearing on her motion on June 9, 2015, the Chancellor denied her request for a prescriptive easement and the other relief requested in said motion with the entry of an "Order Denying Defendant's Motion for New Trial or in the Alternative, to Alter or Amend" (R. p. 153) filed on July 8, 2015.

Cathy now seeks review of the Chancellor's denial of her claim to a prescriptive easement and a reversal thereof.

The review of a chancellor's findings of fact is the manifest error/substantial evidence rule. A chancellor's findings will not be disturbed unless they are manifestly wrong, clearly erroneous or an erroneous legal standard was applied. *Nichols v. Fundeburk*, 883 So.2d 554, 556 (Miss. 2004). The chancery court's interpretation and application of the law, however, is reviewed under a de novo standard. *Weissinger v. Simpson*, 861 So.2d 984, 987 (Miss. 2003).

The standard and burden of proof to establish a prescriptive easement[1] is the same as a claim of adverse possession of land. *Thornhill v. Caroline Hunt Trust Estate*, 594 So.2d 1150, 1153 (Miss. 1992). In order to establish adverse possession or a prescriptive easement the evidence must show that possession is: (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. *Id.* These elements must be proven by clear and convincing evidence. *Id.*

The evidence during the three day trial of this cause proved each of the necessary elements. Cathy's father, Johnny Cecil Lott was the owner of the property in dispute which now belongs to Cathy in 1963, when Kenneth Deloach, while working for the County as a bulldozer operator, pushed the access road to the cemetery from the County Road at the location it presently exists. (T. pp. 58-59). Her father was present when this occurred. (T. pp. 62)

The gap on the southern cemetery fence line near the entrance gate was put in by Johnny Cecil Lott about 38 years ago according to Kenneth Deloach. (T pp. 74-75) Even Rita acknowledged that the gap was owned by her father and admitted that she and Kenneth had helped Johnny Cecil Lott move cattle through the gap from time to time. (T. p. 353).

The foregoing facts, together with, the statement of facts relevant to Cathy's prescriptive easement claim heretofore set forth, meet all of the elements necessary for the creation of a prescriptive easement.

Johnny Cecil Lott's claim of ownership is shown by his cutting the southern boundary fence and installing a wire gap supported by wooden posts stood in place of what formerly was an unbroken fence strung between metal posts. His use of the access road for his cattle and farming operation to access his personal property to conduct his farming operations was actual

and hostile to the ordinary use and purpose of the cemetery.

The changes to the southern fence line resulting from his insertion of the gap are obvious, notorious and visible. Most of the persons who opposing Cathy's claim were aware of it and therefore, it was certainly sufficient to put the Liberty Baptist Church on notice that Mr. Lott was using that portion of the property for something other than cemetery purposes. Johnny Cecil Lott's use of the access road for these purposes was conducted peacefully by him for a span of in excess of thirty (30) years.

His use was exclusive in that it is consistent with the definition of that term as set forth in *Keener Properties, LLC v. Wilson*, 912 So.2d 954 (Miss. 2005), to-wit:

Initially, it is necessary for us to properly define the term "exclusive" as it is applied to a prescriptive easement. After a careful review of relevant case law, we adopt the definition of the term "exclusive" as defined by the Court of Appeals. In *Lynn v. Soterra Inc.*, 802 So.2d 162, 168 (Miss. Ct. App. 2001), a boundary line dispute was brought between owners of property to the north and the south. When discussing the issue of exclusivity in the context of adverse possession, the Court of Appeals stated:

The question in the end is whether the possessor acts relied upon by the would be adverse possessor are sufficient to fly his flag over the lands and to put the record title holder upon notice that the lands are held under an adverse claim of ownership. *Id.* It was not necessary for Buford or Soterra to exclude others from the use of the road, but only that there was "an intention to possess and hold land to the exclusion of, and in opposition to, the claims of all others, and the *claimant's conduct must afford an unequivocal indication that he is exercising dominion of a sole owner.* "

Id.

¶ 7. In *Moran v. Sims*, 873 So.2d 1067, 1069-70 (Miss. Ct. App. 2004), the claimant sought a prescriptive easement with respect to a driveway over the landowners' property that provided claimant access to a highway. When analyzing the exclusivity requirement for a prescriptive easement, the Court of Appeals stated that "'Exclusive' use does not mean that no one else used the driveway. Exclusivity here means that the use was consistent with an exclusive claim to the right to use." *Id.*

¶ 8. We conclude that the distinction to be made when using the term "exclusive" as it relates to a prescriptive easement does not mean to keep all others out, but to show a right to use the land above other members of the general public. *Wilson* and *Anderson-Tully* are correct when they assert that to meet the exclusivity requirement, they did not have to exclude others or the general public from using the road across *Keener's* property. They

were only required to show a claim to the right to use the road over and above that of a member of the indiscriminate public. Keener's use of the *Lynn* case to establish the requirements of a prescriptive easement is acceptable, but the use of the case in order to define the term "exclusive" is not viable because of the subtle distinctions which exist when using the term in relation to adverse possession and a prescriptive easement *Keener* at 956-957

Based on the overwhelming evidence in this case, with parties on both sides of the case testifying to acts of Johnny Cecil Lott which were consistent with the elements necessary for a prescriptive easement to be granted, the Chancellor's denial of a non-exclusive easement over the cemetery access road for ingress and egress to her land adjoining the cemetery was clearly erroneous and should be reversed.

At the hearing⁴ on Cathy's " Motion for New Trial or in the Alternative, to Alter or Amend", Counsel for the association argued that the easement now sought by Cathy should not be granted since her pleadings did not specifically request that relief. However, the Association was granted an easement over Cathy's property in the Judgment in this cause and a review of the Association's pleadings reflects that they did not ask for that as part of the relief they sought.

Issue 2: The Chancellor erroneously failed to find that the actions of Rita Deloach as an agent for the appellee, Old Liberty Cemetery Association rose to the level of malice necessary to support the counter-claim of Cathy Grantham for slander of title

In an action for slander of title, a claimant must show that another has *falsely* and *maliciously* published statements that disparage or bring into question the claimant's right of title to the property, thereby causing special damage to the claimant. *Walley v. Hunt*, 212 Miss. 294, 304, 54 So.2d 393, 396 (1951). The slander may consist of a writing, a printing, or words of

⁴ No transcript of the hearing is included in the Chancery Clerk's file.

mouth, but they will provide grounds for a cause of action only if the statements have been made *falsely* and *maliciously*. *Id.* Whatever the statement, however, in order for it to form the basis of a right of action, it must have been made not only falsely but maliciously. *Id.* (citations omitted).

Malice, however, may be inferred from one's actions. *Phelps v. Clinkscales*, 247 So.2d 819, 821 (Miss. 1971). " The law determines malice by external standards; a process of drawing inferences by applying common knowledge and human experience to a person's statements, acts, and the surrounding circumstances." *Id.* As such, the chancellor's finding of malice should be given great deference and can be reversed only if it is clearly erroneous. *Mason v. Southern Mortgage Co.*, 828 So.2d 735, 739 (Miss. 2002). Here, the chancellor found malice in Mize's actions; however the record is silent as to whether Mize knowingly made a false publication. *Mize v. Westbrook Construction Co.* , 146 So.3d 344, 348 ¶¶ 7,8 (Miss. 2014)

In this case the existence of a continuous fence encompassing the cemetery was the sole basis of the Association's adverse possession claim in the Complaint filed in this cause. That claim arose because of what essentially was an abandonment of the cemetery by Liberty Baptist Church. The evidence from the current Secretary of the show that for at least the twenty-nine year period that Rita Upchurch had been Secretary of the Liberty Baptist Church, no records existed showing any action or discussion by the Church concerning the cemetery. (T pp. 279-280). Until Rita took a copy the old deed to the Church Pastor, in February, 2013 (Ex. 5) and requested that the Church authorize her and her husband to form a committee the Church membership and leadership was unaware that it purportedly owned the cemetery. (T. p. 282) .

Gary Tanner, the Church pastor testified that he obtained the deed purporting to vest title in the cemetery in the Liberty Baptist Church (Ex. 5) from the Church Secretary who had been given the document by Rita. (T. p. 294).

Although Liberty Baptist Church was never able to produce any minutes or records reflecting an authorization for the Church Trustees to convey the property, Rita subsequently called James Narmour and requested that he meet her at the Courthouse in Grenada to execute a quitclaim deed to the cemetery (Ex. 6) conveying the cemetery to the Old Liberty Cemetery Association (T. pp. 314). Mr. Narmour was unaware when he executed the deed that the description contained land outside the fenced boundaries of the cemetery. He had never actually personally even seen the cemetery. (T. pp. 316-18).

As is set forth above, in the portion of this brief containing facts relevant to the issues presented, Rita directed the surveyor to prepare a survey which went outside the cemetery's fence on the East side and to extend that boundary to the County Road. Her purpose of course was to take in property which she knew her father had deeded to Cathy. The Court found in its Judgment that it was undisputed that all of the land bordering the fence belonged to Cathy.

After obtaining the survey known to be false, the Association, again acting through Rita, prepared a deed utilizing the description of Sutherland's survey for Rita, (Ex. 1) so the Liberty Baptist Church could convey it to the Association. Rita called the Trustees of the Church and met them in Grenada to get the deed executed.

The Association, again acting through Rita, had the fraudulent deed recorded in the land deed records, thereby knowingly and maliciously, making a false publication which adversely affected the title to Cathy's property.

Rita's malice toward Cathy is actual as is set forth in the above facts related to Cathy's slander of title claim against the Association. All of her acts were performed as an agent in the service of the Association and her actions are imputed to them. Cathy has met the elements of her claim for slander of title of that the Association, knowingly published a false

instrument which adversely affected the title to property she owned, and that the publication was made with actual malice. The Chancellor's dismissal of Cathy's claim should be reversed.

CONCLUSION

Cathy respectfully requests that the Court affirm that portion of the Chancellor's Judgment in this cause which confirms her title to the land described therein to which the Association obtained record title by virtue of the aforesaid fraudulent deed. Cathy further requests that the denial to her of prescriptive non-exclusive easement over the cemetery access road and the dismissal of her claim against the Association for slander of title will each be reversed.

Respectfully submitted, this the 10th day of May, 2016.

CATHY DORIS L. GRANTHAM
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CERTIFICATE OF SERVICE

I, the undersigned attorney for Cathy Doris L. Grantham, Appellant herein, hereby certify that I have this day filed the foregoing Brief of Appellant using the MEC system, which automatically transmitted a notice of said filing and a copy of the forgoing brief to counsel for Appellee, via
E-mail.

This the 10th day of May, 2016.

s/JAMES H. POWELL, III/s
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