

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-CA-00331 COA**

**KATHY WOOD KNIGHTON AND GAIL WOOD  
SPECK**

**APPELLANTS**

**v.**

**REX M. DELOACH AND WIFE, RUTHANN RAY  
AND UNITED SOUTHERN BANK**

**APPELLEES**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,  
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	02/16/96
TRIAL JUDGE:	HON. DON GRIST
COURT FROM WHICH APPEALED:	LAFAYETTE COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANTS:	LESTER F. SUMNERS
ATTORNEY FOR APPELLEES:	CAROLYN C. KESSINGER
NATURE OF THE CASE:	CIVIL - REAL PROPERTY
TRIAL COURT DISPOSITION:	PARTIAL RELIEF TO BOTH SIDES ON LAND LINE DISPUTE
DISPOSITION:	AFFIRMED - 10/7/97
MOTION FOR REHEARING FILED:	10/17/97
CERTIORARI FILED:	2/4/98
MANDATE ISSUED:	4/16/98

BEFORE THOMAS, P.J., DIAZ, AND SOUTHWICK, JJ.

DIAZ, J., FOR THE COURT:

Kathy Wood Knighton and Gail Wood Speck (Knighton/Speck) sued Rex M. Deloach and his wife, Ruthann Ray, on February 22-23, 1994 in the Lafayette County Chancery Court for injunctive relief and to quiet and confirm title, remove clouds on title, and collect damages for willful trespass. The Deloaches counterclaimed to quiet and confirm title, remove clouds, and for damages. Partial relief was granted to both parties. The chancellor found that Knighton/Speck did not prove they had obtained the abandoned road property by adverse possession, but instead that the property reverted to the record fee holder. The chancellor did find that Knighton/Speck had adversely obtained possession of a strip of land between Hopewell Church Road and the north/south center section line.

The chancellor also held that Knighton/Speck were entitled to neither punitive damages nor attorneys fees but did award them \$500 compensation for Deloach's use of the land. Knighton/Speck appealed the chancellor's ruling and Deloach cross-appealed.

Knighton/Speck's appeal is based on three errors. They claim that (1) the chancellor was manifestly in error when he ruled that Knighton/Speck had not proved adverse possession by uncontradicted, unimpeached testimony, (2) the abandoned road in question is owned by Knighton/Speck and if not by them, then it is still a public road, (3) the denial of punitive damages and attorney's fees for willful trespass was an abuse of discretion.

Deloach cross-appeals arguing that the evidence at trial established that Deloach was the record title owner of the strip of land between the north/south center section line and Hopewell Church Road.

## FACTS

The property concerned in this dispute lies in Section 16, Township 8 South, Range 2 West of Lafayette County, Mississippi. That section does not contain a complete 640 acres as do most sections. It contains only 536.12 acres. Prior to 1962 the Kimmons family owned about 160 acres within the east half of the section-- the west half of the northeast quarter and the west half of the southeast quarter of the section. The property was bounded on its west side by the center line of the section running north/south.

From 1933 until 1962, Raymond Saunders owned and lived on the land, in pertinent part, in the west half of the section, bounded on its east side by the same north/south center line. Hopewell Road cut through the Kimmons' property at its north end and continued until some point where it crossed into and ran through what was then the Saunders' property. There is also an unnamed road maintained by Lafayette County that was used as a mail route which runs through the Kimmons' 160 acres in an east/west direction and intersects Hopewell Road.

In 1962, Mildred Kimmons, who owned the entire 160 acres in question, properly conveyed one-half of the property to Raymond Saunders, via warranty deed. Therefore, from 1962 forward, Saunders owned the property to the west of the section line as well as the approximately 80 acres in the west half of the southeast quarter of the section. In 1972 the Saunders' property was conveyed to another purchaser, and eventually the Deloaches purchased the property from David Thomas in 1989.

The 80 acres in the northeast quarter which Mildred Kimmons still owned was divided among her four siblings when she died. Cornelia K. Wood, Mildred Kimmons's sister, and her husband, Hoyt B. Wood, obtained the southernmost portion of the formerly undivided 80 acres. The Woods conveyed the property to their daughters Kathy Wood Knighton and Gail Wood Speck. This southernmost 20 acres is the property which is in dispute.

The dispute is over two strips of land referred to as tract one and tract two. Tract one is the strip which runs in an approximately north/south direction between Hopewell Road and the north/south center line of Section 16. Tract two is the abandoned road area which is a strip which runs in an approximately east/west direction.

When Deloach purchased the property in 1989, he intended to make improvements on the land.

Deloach hired Ryland Sneed to perform a survey of the property. The survey was completed shortly after Deloach consummated his purchase of the land from David Thomas. Per Sneed's survey, both of the disputed tracts were on Deloach's property. Tract one which was between Hopewell Road and the Knighton/Speck property varied from eleven feet at the north end of the strip to twenty-five feet at the south end. The survey also showed Deloach's north property line which abutted the Knighton/Speck property to run along the east/west half-section line as stated in the deed from Mildred Kimmons to Raymond Saunders in 1962. This placed the Deloach northern property line north of the old abandoned road.

Deloach worked to clear the land from 1989 until 1992 when he began making plans to construct a drainage facility across his property and under the abandoned road to prevent erosion. Deloach talked with John Knighton, Kathy Knighton's husband, and told him about his plans to construct the drainage system. Deloach agreed to furnish Knighton with the final plans and survey for the work to be done.

In October 1992, Deloach hired an engineering firm to develop the plans for the drainage system, as well as a gate across the entrance to what he considered to be his property. Deloach met with Knighton in December 1992 to review the plans. Knighton indicated that he would need to discuss the plans with his wife. They met again in 1993. At that time, Knighton advised Deloach that he and Speck disputed the boundary line near the abandoned road. Knighton/Speck claimed that Deloach's north boundary line lay to the south of the abandoned road bed. He based this claim on a concrete marker (the Foley marker) that was put in place as a result of a survey done in 1975 when the Kimmons were in the process of dividing the 80 acres among themselves. The Foley marker was not immediately visible in 1989 because it was overgrown with vegetation, but was later uncovered. Deloach had Sneed perform a survey again to confirm the boundaries and corners of the property. Sneed's findings were the same as with the previous survey-- the boundary line lay along the half-section line about five feet north of the center line of the abandoned road.

In January 1994, Deloach again met with Knighton and suggested that they grant him an easement over the lands for the drainage system. The record indicates that Deloach knew he was not going to receive the requested easement, but installed the drainage system regardless. He also erected a fence along what he believed to be the boundary of his property on the north/south center line at the top of the bank along Hopewell Road. After objections by Knighton/Speck to the gate being located across Hopewell Road, Deloach put the gate beyond the end of Hopewell Road. Knighton/Speck then brought this suit claiming to be the owners of both tract one and two.

#### ISSUES ON APPEAL

A. Did the chancellor err when he ruled that there was not sufficient evidence to prove that Knighton/Speck had adversely possessed tract two the abandoned road area?

It is uncontradicted that Deloach had record title to the disputed tract two, from the road's center point to a line running east/west approximately five feet north of the center of the road. This would put the dividing line between the Knighton/Speck's southern boundary and Deloach's northern boundary at the east/west half-section line.

At trial Knighton/Speck claimed that they had adversely possessed all of the strip of land north of the abandoned road and all of the abandoned road to its south. This would place the boundary line about thirty-three feet south of the half-section line. One of the bases for this claim was the marker put in place after a survey in 1974 and 1975 by Mr. Foley which was set thirty-three feet south of the half-section line. Deloach argues that the reason for the Foley survey was not to determine boundaries, but to divide the land among the Kimmons siblings. Deloach goes on to argue that Foley did not follow the proper survey procedures and failed to take into account that the section did not contain a full 640 acres.

Aside from the Foley marker, the other basis for the claim of adverse possession to tract two was that Raymond Saunders maintained a fence just south of the abandoned road--the corner of which was part of the basis for the placement of the Foley marker. Knighton/Speck argue that this fence represents the boundary line, and that Saunders had always recognized this as the boundary. However there was testimony that the fence existed prior to 1962--before any division of the property-- and therefore, could not have represented a boundary.

The chancellor found that the half-section line dividing Knighton/Speck's property to the north from Deloach's property to the south is the correct boundary of the properties. He found that because Deloach was the record title holder to the property, the only means Knighton/Speck have to prove ownership is by adverse possession. Adverse possession can only be established by showing each of the following elements by clear and convincing evidence:

1. That the claimant held the property under a claim of ownership;
2. Possession was actual or hostile;
3. Possession was open, notorious, and visible;
4. Possession continued uninterrupted for a period of ten years;
5. Possession was exclusive; and
6. Possession was peaceful.

*Blankinship v. Payton*, 605 So. 2d 817, 819 (Miss. 1992). The term "possession" refers to effective control over a specific area of land, evidenced by things visible to the eye or perceptible to the senses. *Id.* at 819-20. The acts must be such that would give the record owner notice of the adverse possession. *Johnson v. Black*, 469 So. 2d 88, 90-91 (Miss. 1985).

The abandoned road, which had at one time been used for a mail route, had been abandoned by the county many years prior, although the exact date is not clear. The road had become overgrown with kudzu by 1973 and was nearly impassable at the time this conflict arose. Foley, in performing his survey in 1975, did not use the U.S. Governmental Monuments procedure, but merely tried to make the eighty-acre parcel fit the contours of the land. Foley set a marker at the southwest corner of the disputed parcels, and Knighton/Speck contend that it represents the true southwest corner of their property. The method Foley used was a less accurate method of survey than the Monuments method, and therefore incorrectly placed the boundary line. Deloach was not aware of the Foley marker when

he purchased the property because it had become overgrown with and hidden by vegetation. The chancellor found that the evidence presented by Knighton/Speck was not clear and convincing and did not prove that they acted in such a way as to openly exert a claim of ownership over this disputed tract of land. The chancellor went further to say that Knighton/Speck's actions of ownership have been infrequent and have not established control to a degree which would alert any record owner of their ownership claim. We will not disturb the chancellor's findings unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous or applied an erroneous legal standard. *Denson v. George*, 642 So.2d. 909, 913 (Miss. 1994). Whenever there is substantial evidence in the record to support the chancellor's findings, then the appellate court must affirm those findings. *Id.* We do not find that the chancellor abused his discretion, was manifestly wrong, or in error. We find that there was also substantial evidence in the record to support the chancellor's findings. Therefore, we affirm the chancellor's finding as to tract two and hold that Deloach has title to the property.

B. Did the chancellor err when he ruled that tract two was not owned by the public?

Knighton/Speck claim that if they do not own the abandoned road, then the public still owns it. However, there is no evidence to support that the public made use of this road. It was overgrown with vegetation and kudzu and was impassable at some points. There was evidence that the Kimmons family took steps themselves to prevent public use of the road by placing a "posted" sign in the middle of it. This coupled with the finding that there was not sufficient use of the road by Knighton/Speck results in Deloach obtaining ownership of the abandoned road.

There was a question at trial as to whether the road had been abandoned by the public. Mississippi recognizes common law abandonment of public roads and streets, demonstrated by non-use over an extended period of time. *R&S Development, Inc. v. Wilson*, 534 So. 2d 1008, 1010-11 (Miss. 1988). Once the road was abandoned, then the county obtained an easement. *Whitworth v. Mississippi Highway Comm'n*, 203 Miss. 94, 101; 33 So. 2d 612, 613 (1948). Prior to 1948 a county could obtain no greater title than an easement in abandoned roads. *Id.* There is no question that the road in this case was in existence prior to 1948 and therefore, all the county could obtain here is an easement.

The law in Mississippi is that when an easement is vacated, the interest in the property reverts to the holder of the fee. *Mississippi Highway Comm'n v. McClure*, 536 So. 2d 895, 896 (Miss. 1988). Therefore, no matter what date the road was abandoned, it reverted to the record title holder and eventually to Deloach. We affirm the chancellor's ruling that Deloach is the owner of the tract two property.

C. Did the chancellor err when he refused to award punitive damages and attorney's fees to Knighton/Speck?

The chancellor awarded Knighton/Speck \$500 as compensation for Deloach's trespass and his continued use of the property as an easement in order to install the drainage system. The chancellor also ordered that a fence which had been constructed by Deloach running along the east side of tract one be removed within thirty days. Deloach was ordered to pay all costs of removal of the fence. Knighton/Speck argue that the chancellor abused his discretion, and they should have been awarded at least nominal punitive damages and full attorney's fees.

There was no damage to Knighton/Speck's property, but instead the improvements made by Deloach benefit both parties. Therefore, the chancellor was not in error when he ruled that Deloach pay Knighton/Speck \$500 compensation for the trespass and continued use of the easement.

#### ISSUES ON CROSS-APPEAL

A. Did the chancellor err when he ruled that tract one the strip of land between the north/south center section line and Hopewell Church Road had been adversely possessed by Knighton/Speck ?

The argument made by both parties is essentially the same for tract one as it was for tract two. Knighton/Speck argue that they adversely possessed the land, and Deloach argues that he purchased it and is record title owner. Because the law of adverse possession has been discussed previously, we will not belabor the law, but simply apply the pertinent facts to the law.

The Kimmons family cultivated and bush-hogged the tract from 1962 to at least 1987. Their control over the land was open, obvious and continuous to the extent that any record owner would have been placed on notice of the Kimmons' claim to the land. Proof shows that neighbors of the Kimmons, including the Saunders, were aware of the Kimmons' use of the land. It was also proved that the tract was an exclusive means of ingress and egress by the Kimmons family. Their dominion over the land was such that they were approached and granted an easement over the land to the Hopewell Water Association. Knighton/Speck proved by clear and convincing evidence that they or their predecessors had obtained the tract by adverse possession.

We affirm the chancellor's rulings on all the above issues.

**THE JUDGMENT OF THE LAFAYETTE COUNTY CHANCERY COURT IS AFFIRMED.  
ALL COSTS ARE TAXED TO THE APPELLANT.**

**BRIDGES, C.J., THOMAS, P.J., COLEMAN, HERRING, HINKEBEIN, KING, PAYNE, AND  
SOUTHWICK, JJ., CONCUR.**

**MCMILLIN, P.J., NOT PARTICIPATING.**