

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-01020 COA**

CURTIS CUNNINGHAM

APPELLANT

v.

ELLA JANE COBB

APPELLEE

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

DATE OF JUDGMENT:	08/15/96
TRIAL JUDGE:	HON. ROBERT L. LANCASTER
COURT FROM WHICH APPEALED:	NOXUBEE COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	WILLIAM L. BAMBACH
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: TIMOTHY L. GOWAN
NATURE OF THE CASE:	CIVIL - CONTRACT
TRIAL COURT DISPOSITION:	DISMISSED WITH PREJUDICE
DISPOSITION:	AFFIRMED - 1/13/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/23/98

BEFORE BRIDGES, C.J., PAYNE, AND SOUTHWICK, JJ.

BRIDGES, C.J., FOR THE COURT:

Cunningham filed suit in the chancery court of Noxubee County for specific performance of a contract for the sale of land. Cobb answered that she never contracted with Cunningham for the sale of land, but merely accepted his earnest money to negotiate the sale of an acre sometime in the future. Additionally, Cobb counterclaimed to have Cunningham evicted from her property. The trial court found that Cunningham failed to prove the existence of a valid contract for the sale of land, and ordered that he remove his mobile home from Cobb's property. On appeal, Cunningham presents the following issue:

**I. WHETHER THE CHANCELLOR WAS CLEARLY ERRONEOUS IN FINDING
THERE WAS NO MERIT TO THE PLAINTIFF'S COMPLAINT WHERE THERE**

WAS SUBSTANTIAL CREDIBLE EVIDENCE OF A CONTRACT FOR THE SALE OF LAND BETWEEN THE PARTIES AND UNDISPUTED EVIDENCE OF EQUITABLE ESTOPPEL.

Finding no error, we affirm.

FACTS

Ella Jane Cobb is a sixty-three-year-old widow living in Macon, Mississippi. Cobb owns eighteen acres of land and a small country store in Noxubee County. Cunningham claims that he is Cobb's nephew, although Cobb denies any relation. According to Cunningham, he approached his aunt about purchasing some of her property. Cunningham was living in Alabama at the time. Cobb and Cunningham went to Cunningham's attorney's office where Cunningham talked to his attorney. Cunningham's attorney told him that before he could draw up a contract for the sale of land, Cunningham would have to have the specific piece of land surveyed and marked.

Cunningham claims that he and Cobb went to her store where he paid \$1,000 for an acre in the back of her property. The trial judge admitted into evidence a handwritten receipt produced by Cunningham which reads, "Feb 4, 1994, Curtis Cunningham 1 acre land far back, \$1,000, (signed) Ella Jane Cobb." Cunningham claims that this receipt is the contract for the sale of the one acre between him and Cobb. According to Cunningham, he and Cobb walked to the back of her property and walked off an acre, and it was on that spot that he placed his mobile home.

Cobb testified that she did not sell Cunningham any land, and she only allowed him to place his mobile home on her property as a favor because he told her he could not pay his rent. According to Cobb, she accepted Cunningham's \$1,000 as earnest money until they could have the property surveyed and negotiate a selling price. She knew that Cunningham's attorney had told him to get the land surveyed and then come back to have a contract drawn up. She and Cunningham had never stepped off an acre; she has problems walking, and due to the condition of the land, it would have been impossible for them to step off any land at the time claimed by Cunningham. A survey was never done; they never agreed on a particular acre; and they never agreed on a selling price. In August, 1994, Cobb went to Cunningham and told him to get a lot in the back surveyed and pay the purchase price, or move. When Cunningham did nothing, Cobb returned the \$1000 earnest money to Cunningham's lawyer. When still no action had been taken, Cobb went to justice court to have Cunningham evicted. The justice court judge advised Cobb that the matter was too complicated for justice court. Cunningham then sued to enforce the supposed contract in chancery court.

The chancery court, while not making specific findings of fact, dismissed Cunningham's complaint with prejudice, and ordered that Cunningham remove his person and property from Cobb's land within thirty days of the entry of judgment.

I. WHETHER THE CHANCELLOR WAS CLEARLY ERRONEOUS IN FINDING THERE WAS NO MERIT TO THE PLAINTIFF'S COMPLAINT WHERE THERE WAS SUBSTANTIAL CREDIBLE EVIDENCE OF A CONTRACT FOR THE SALE OF LAND BETWEEN THE PARTIES AND UNDISPUTED EVIDENCE OF EQUITABLE ESTOPPEL.

Our standard of review of a chancellor's findings is a familiar one. "This Court will not disturb those findings unless manifestly wrong, clearly erroneous, or an erroneous legal standard was applied." *McAdory v. McAdory*, 608 So. 2d 695, 699 (Miss. 1992) (citations omitted). "Reversal is permitted only in those cases where the chancellor was manifestly in error in his finding of fact and manifestly abused his discretion." *Id.* (citations omitted). "Where the factual findings of the chancellor are supported by substantial credible evidence, they are insulated from disturbance on appellate review." *Id.* (citations omitted). Where, as in the instant case, the chancellor does not make specific findings on issues of fact, "this Court assumes that the issues were resolved in favor of the appellee." *Denson v. George*, 642 So. 2d 909, 913 (Miss. 1994).

Cunningham claims that there was substantial credible evidence of a contract for the sale of land. Section 15-3-1 of the Mississippi Code Annotated states that a contract for the sale of land must be in writing, "unless. . . some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith. . . ." Cunningham's receipt merely states that Cobb received \$1000, and mentions one acre of land far back. It does not state that the money was received for the sale of the land. Nor does the receipt state the exact location of the land, but refers only to one acre far back. The Mississippi Supreme Court has held that receipts so lacking in specificity do not satisfy our statute of frauds. *Culpepper v. Chain*, 202 Miss. 309, 311, 32 So. 2d 266, 266 (1947). In that case, the receipt in question read: "March 20, 1943. Received from Z.D. Chain the sum of \$400 as payment on the place on which he now lives. Clarence Culpepper." *Id.* The supreme court held that the receipt was insufficient and did not warrant confirmation of title in the appellant. *Id.* In *Nickerson v. Fithian Land Co.*, 118 Miss. 722, 723, 80 So. 1, 2 (1918), the supreme court also held that a receipt was lacking because it did not state where the land in question was located. *Id.* The receipt stated: "Received from Monroe Nickerson the sum of \$900 to apply on purchase of land on the south side of town of Darling, to be measured later and paid for at the rate of \$30 per acre." *Id.* The supreme court stated that the lower court was correct in denying specific performance, "because the writing relied on by [the appellant] is too indefinite and uncertain in its terms upon which to predicate specific performance." *Id.*

While these cases may be old, the law is still good and strong enough that on them we can rely. More recent cases have instructed us on what is required in order to grant specific performance of a contract. "[T]he court must be able to look at instrument and determine what performance is required." *Duke v. Whatley*, 580 So. 2d 1267, 1274 (Miss. 1991). "Therefore, without knowledge of the parties [sic] intent of an essential term, this Court, and any court, is unable to determine what performance should be required. The agreement must be definite and certain in order to be enforceable." *Id.* (citations omitted). The memorandum "must contain words appropriate to, and indicating an intention thereby, to convey or lease land, must identify the land, [and] set forth the purchase price." *Putt v. City of Corinth*, 579 So. 2d 534, 538 (Miss. 1991) (citation omitted). According to the case authority of our state, Cunningham's claim that a valid contract for the sale of land existed, must fail. The chancellor was correct in dismissing his case with prejudice and ordering him to vacate Cobb's land. Additionally, Cunningham's claim of equitable estoppel must also fail. Cunningham had to prove that "(1) that he has changed his position in reliance upon the conduct of another and (2) that he has suffered detriment caused by his change of his position in reliance upon such conduct." *PMZ Oil Co. v. Lucroy*, 449 So. 2d 201, 206 (Miss. 1984). Cunningham moved from Alabama and as a favor, Cobb allowed him to place a mobile home on her land before he ever

purchased property. Cobb allowed him to live on the land rent-free for at least five months. Cunningham has failed to prove any detriment caused by Cobb's actions. This claim is meritless and must fail.

THE JUDGMENT OF THE NOXUBEE COUNTY CHANCERY COURT DISMISSING CUNNINGHAM'S COMPLAINT WITH PREJUDICE AND ORDERING HIM TO VACATE COBB'S LAND IS AFFIRMED. COSTS OF THIS APPEAL ASSESSED TO APPELLANT.

McMILLIN AND THOMAS, P.JJ., COLEMAN, HINKEBEIN, KING, AND SOUTHWICK, JJ., CONCUR. HERRING, J., CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY DIAZ, J..

PAYNE, J., NOT PARTICIPATING.

HERRING, J., CONCURRING:

Although I agree with the result reached by the majority, I write separately to state my opinion that in order to affirm the trial court's ruling in this case, we must conclude that the chancellor made certain findings of fact and conclusions of law other than the mere fact that the memorandum of sale involved herein was insufficient to comply with the requirements of Mississippi's Statute of Frauds.

Without doubt, Section 15-3-1 of the Mississippi Code of 1972 requires that a contract for the sale of land must be in writing. Further, I agree with the majority that an enforceable land contract must describe the land with specificity. Thus, I agree that the memorandum in the case *sub judice* is insufficient to form a binding contract of sale. However, our Mississippi Supreme Court has also held that "[t]he statute of frauds has no application where there has been a full and complete performance of the contract by one of the contracting parties, and the party so performing may sue upon the contract in a court of law." *American Chocolates, Inc. v. Mascot Pecan Co. Inc.*, 592 So. 2d 93, 95 (1991) (citing *Pountaine v. Fletcher, et al.*, 158 Miss. 720, 126 So. 471(Miss. 1930)). In the case before us, Cunningham claims that the \$1,000 that he paid to Mrs. Cobb constituted the full purchase price of the contested land. If this were so, then the *American Chocolates* rule would apply and Cunningham's claim that he had an enforceable contract to purchase land would not fail because of the Statute of Frauds.

Mrs. Cobb testified that the \$1,000 paid to her by Cunningham merely constituted earnest money, and was not full payment for the land. Thus, a factual dispute arose between the two parties on this crucial issue, which was presented to the trial court in the form of Cunningham's claim of equitable estoppel. Although the chancellor did not make any findings of fact as to whether the \$1,000 payment constituted full payment for the land, we must assume that he agreed with Mrs. Cobb that it was not full payment. *See Bredemeier v. Jackson*, 689 So. 2d 770, 777-78 (Miss. 1997)("When a chancellor makes a ruling without specific findings of fact, this Court assumes that the chancellor resolved any factual disputes in favor of the appellee."). Therefore, in deference to the chancellor, I agree with the majority that no binding contract to purchase land existed between the parties.

DIAZ, J., JOINS THIS SEPARATE WRITTEN OPINION.