

**IN THE COURT OF APPEALS 2/27/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-CA-00360 COA**

**REV. LOUIS B. PRICE, CELESTE PRICE, MABLE RUTH HARRIS, ANNA PRICE  
DAWSON, HESTER PRICE PRESTON AND MARY LEE CARTER**

**APPELLANT**

**v.**

**THOMAS L. ROSENBLATT**

**APPELLEE**

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

TRIAL JUDGE: HON. HYDE RUST JENKINS II

COURT FROM WHICH APPEALED: WILKINSON COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANTS:

CHARLES E. MILLER

ATTORNEY FOR APPELLEE:

W. BRUCE LEWIS

NATURE OF THE CASE: TITLE DISPUTE/ADVERSE POSSESSION

TRIAL COURT DISPOSITION: JUDGMENT FOR DEFENDANT

BEFORE THOMAS, P.J., COLEMAN, AND McMILLIN, JJ.

THOMAS, P.J., FOR THE COURT:

This case involves a boundary line dispute between adjoining landowners, the Plaintiffs, the heirs of Laura Jones Price, and the Defendant, Thomas L. Rosenblatt. The Prices filed suit claiming ownership of the disputed section by deed or, alternatively, that they had adversely possessed the land. The trial court rendered judgment for Rosenblatt. The Prices appeal, assigning as error the following:

I. THE COURT ERRED IN RULING THAT THE 1962 SURVEY WAS MORE RELIABLE THAN THE 1991 SURVEY.

II. THE COURT ERRED IN RULING THAT THE PRICES DID NOT ADVERSELY POSSESS THE PROPERTY.

## FACTS

This dispute arises from the determination of the southern boundary line for property inherited by the Prices. In 1875, Levi L. Babers conveyed a parcel of land to Alcene Hall by a deed which purported to convey "[o]ne half of fifty (50) acres of land more or less." The southern boundary for the Alcene Hall tract is described as "the North Line of the Rock Hill Plantation." The parties agree that the north line of the Rock Hill Plantation is also the section line between Section 40, in which the Price property is located, and Section 47, in which the Rosenblatt property is located.

There was conflicting testimony at trial about the location of the section line. Both sides introduced lay and expert testimony to establish the boundary. Several plats and maps of the area were also introduced. The chancellor chose to accept a boundary line favoring Rosenblatt which was evidenced by a 1962 survey completed on behalf of Sinclair Oil Company and Serio-Punches Oil Company. The 1962 survey followed an old fence line, and the surveyors marked the section corner with an iron post. The Prices introduced a conflicting survey that was never completed. The Prices' surveyor based his survey on a township plat which the chancellor found contained "obvious errors." Further, the Prices' surveyor never even located the iron post marker placed in 1962.

The chancellor found that the Prices had failed to prove their adverse possession claim by clear and convincing evidence. The Prices testified that they used the land by picking berries, playing baseball as children and occasionally allowing hogs to feed in the area. Rosenblatt testified that he and his predecessors in title had constructed the old fence and a grain bin, allowed the drilling of oil wells on the property and maintained a fishing pond in the disputed area.

## ANALYSIS

This Court must apply the substantial evidence/ manifest error test to questions of fact. *Rawls v. Parker*, 602 So. 2d 1164, 1167 (Miss. 1992); *Johnson v. Black*, 469 So. 2d 88, 90 (Miss. 1985). This Court's scope of review is severely limited, and the chancellor's findings of fact on conflicting evidence will not be overturned unless clearly erroneous. *Pieper v. Pontiff*, 513 So. 2d 591, 594

(Miss. 1987).

Both of the Prices' assignments of error basically allege that the chancellor's ruling was against the weight of the evidence. However, the chancellor heard detailed and conflicting evidence at trial, and this Court finds that there is ample basis for the chancellor's ruling. "The credibility of the witnesses and the weight of their testimony, as well as the interpretation of evidence where it is capable of more than one reasonable interpretation, are primarily for the chancellor as trier of facts." *West v. Brewer*, 579 So. 2d 1261, 1263-64 (Miss. 1990) (quoting *Polk v. Polk*, 559 So. 2d 1048, 1049 (Miss. 1990)).

Finding no error, we hold that the chancellor was correct in ruling that Rosenblatt

possessed title by deed and that the Prices failed to establish adverse possession to the land.

**THE JUDGMENT OF THE WILKINSON COUNTY CHANCERY COURT IN FAVOR OF ROSENBLATT AFFIRMED. COSTS ARE ASSESSED TO THE APPELLANTS.**

**FRAISER, C.J., BRIDGES, P.J., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.**