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IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

MYRTIS P. WADSWORTH

PLAINTIFF

VS.

NO. 91-11-1278

CITY OF HERNANDO, MISSISSIPPI; DESOTO COUNTY, MISSISSIPPI; BRIDGFORTH-LEWIS BUILDERS, INC.; JOE ELI LAUDERDALE; THE BOARD OF EDUCATION, DESOTO COUNTY, MISSISSIPPI; WEE CARE CHILD DEVELOPMENT CENTER, INC.; CAROLYN B. BURK; BOBBIE JEAN FOWLER; HERNANDO HEIGHTS, LTD., A LIMITED PARTNERSHIP; TRUSTMARK NATIONAL BANK, HERNANDO BRANCH; UNITED STATES OF AMERICA; AND ANY AND ALL PERSONS ADVERSELY AFFECTED BY THE PARTIAL VACATING OF PARKWAY SUBDIVISION, FINAL PLAT OF SECTION "A", AS RECORDED IN PLAT BOOK 17, PAGES 9-12, AND PARKWAY SUBDIVISION, FINAL PLAT OF SECTION "A", AS RECORDED IN PLAT BOOK 18, PAGES 7-10, AND FILED FOR RECORD IN THE OFFICE OF THE CHANCERY CLERK OF DESOTO COUNTY, MISSISSIPPI; AND ANY AND ALL PERSONS DIRECTLY INTERESTED IN THE PARTIAL VACATING OF SAID PLATS

DEFENDANTS

DECREE PARTIALLY VACATING SUBDIVISION PLATS

This cause came on to be heard on the filed verified Amended Complaint For Partial Vacating Of Subdivision Plats of the Plaintiff, Myrtis P. Wadsworth on personal service of process on the Defendants hereinafter enumerated, upon the filed verified Waiver Of Process of the Defendants hereinafter enumerated, Answer And Joinder to Amended Complaint For Partial Vacating of Subdivision Plat of the Defendant, Wee Care Child Development Center, Inc. and the Answer Of The United States Of America by and through the Farmers Home Administration and upon proof heard and taken in open court and, accordingly, the Court doth find and adjudicate as follows:

That the Plaintiff, Myrtis P. Wadsworth, is an adult resident citizen of DeSoto County, Mississippi.

That this action is brought pursuant to Section 19-27-31 of the Mississippi Code of 1972, Annotated and Amended, and accordingly the Plaintiff has made Defendants to this cause of action the following persons and/or entities who are adversely affected by said action and/or interested in said action, to wit:

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W. E. DAVIS, CLERK  
BY E. Miller D.C.

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(a) The City of Hernando, Mississippi, a Mississippi municipal corporation, whose mayor is the Honorable Wilson L. Douglas upon whom process may be served;

(b) DeSoto County, Mississippi, which may be served with process by service upon Mr. Eulo Loyd, President of the Board of Supervisors of DeSoto County, Mississippi;

(c) Bridgforth-Lewis Builders, Inc., a Mississippi corporation, whose registered agent for process and upon whom process may be served is Barry W. Bridgforth, 187 Stateline Road East, Suite 1, Southaven, Mississippi 38671;

(d) J. E. Lauderdale, an adult resident citizen of DeSoto County, Mississippi, who may be served with process at 538 Mount Pleasant Road NE, Hernando, Mississippi 38632;

(e) The Board of Education, DeSoto County, Mississippi, who may be served with process by service upon Albert Broadway, Superintendent of Education of DeSoto County, Mississippi, 655 East Commerce Street, Hernando, Mississippi 38632;

(f) Wee Care Child Development Center, Inc., a Mississippi corporation, the owner of Lot 3, Parkway Subdivision, Section "A", whose registered agent for process and upon whom process may be served is Sanford L. Powell, Route 2, Box 11-B, Senatobia, Mississippi 38668;

(g) Carolyn B. Burk, the owner of Lot 7, Parkway Subdivision, Section "A", a non-resident of the State of Mississippi, living and residing at 976 Wren Roost Circle, Apt. 1, Memphis, TN 38119 where she may be served with process;

(h) Bobbie Jean Fowler, the owner of Lot 5, Parkway Subdivision, Section "A", an adult resident citizen of DeSoto County, Mississippi, who may be served with process at 386 Woodsmoke, Southaven, Mississippi 38671;

(i) Hernando Heights, Ltd., a Limited Partnership, the owner of Lots 4, 6, 8, 10, 12 and 14, Parkway Subdivision, Section "A", which may be served with process by service upon Steven McKinney, General Partner, at P. O. Box 172, West Point, Mississippi 39773.

(j) Trustmark National Bank, Hernando Branch, the mortgage holder

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for Lot 7, Parkway Subdivision, Section "A", whose president is Harvey G. Ferguson, Jr. and upon whom process may be served;

(k) United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, the mortgage holder for Lots 4, 6, 8, 10, 12 and 14, Parkway Subdivision, Section "A". That the United States of America may be served with process by service upon Honorable Robert Q. Whitwell, United States Attorney for the Northern District of Mississippi.

(l) Any and all persons adversely affected by the partial vacating of Parkway Subdivision, Final Plat of Section "A", as recorded in Plat Book 17, Pages 9-12, and Plat Book 18, Pages 7-10.

(m) Any and all persons directly interested in the partial vacating of Parkway Subdivision Final Plat of Section "A" as recorded in Plat Book 17, Pages 9-12, and Plat Book 18, Pages 7-10.

That the Court has jurisdiction of both the subject matter and parties to this litigation and jurisdiction is vested in this Court as to the United States of America, acting through the Farmers Home Administration, the United States Department of Agriculture pursuant to 28 U.S.C. Section 2410(b).

That the Defendants, City of Hernando, Mississippi, DeSoto County Mississippi, Bridgforth-Lewis Builders, Inc., J. E. Lauderdale, Wee Care Child Development Center, Inc. and Carolyn B. Burk, have separately filed their individual Waiver Of Process entering their appearance in this cause and agreeing that said matter may be heard and disposed of without further notice to them and they have by their waiver joined in the action.

The Plaintiff has properly obtained service of process upon the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, pursuant to Rule 4, Federal Rules of Civil Procedure.

That the Court has acquired jurisdiction over the Defendants, The Board of Education of DeSoto County, Mississippi, Bobbie Jean Fowler, Hernando Heights, Ltd., a Limited Partnership, and Trustmark National Bank, by virtue of personal service of process upon said individuals

and/or entities. That the Plaintiff has heretofore caused an Entry of Default to have been entered against said The Board of Education, DeSoto County, Mississippi, Bobbie Jean Fowler, Hernando Heights, Ltd., a Limited Partnership, and Trustmark National Bank pursuant to Rule 55, Mississippi Rules of Civil Procedure, and the Plaintiff is now entitled to a Default Judgment to be entered pursuant to said rule against the said The Board of Education, DeSoto County, Mississippi, Bobbie Jean Fowler, Hernando Height, Ltd., a Limited Partnership, and Trustmark National Bank, said Defendants having been personally served with the Summons and Complaint filed in this cause and none of said individuals being an infant or an unrepresented incompetent person and all of said persons and entities having failed to plead or otherwise defend and said Defendants having taken no proceedings since the Entry Of Default by the Clerk of this Court.

That the Plaintiff, pursuant to Section 19-27-31 of the Mississippi Code of 1972, Annotated and Amended, made as Defendants to this action any and all persons adversely affected by the partial vacating of Parkway Subdivision, Final Plat of Section "A", as recorded in Plat Book 17, Pages 9-12 and Plat Book 18, Pages 7-10, and likewise the Plaintiff made as a Defendant to this cause of action any and all persons directly interested in the partial vacating of Parkway Subdivision, Final Plat of Section "A" as recorded in Plat Book 17, Page 9-12, and Plat Book 18, Pages 7-10, and accordingly the Court obtained jurisdiction over said parties by virtue of the publication of summons published in the DeSoto Times, a newspaper published in and having a general circulation in the City of Hernando, County of DeSoto, said publication appearing in the November 13th, 20th and 27th, 1991 editions of said newspaper and as shown by the Proof of Publication on file in this cause. That, accordingly, no persons adversely affected by the partial vacating of said subdivision or directly interested in the partial vacating of said subdivision have filed a response or appeared herein. That the Plaintiff has fully complied with the requirements of Section 19-27-31 of the Mississippi Code of 1972, Annotated and Amended, for the vacating of said subdivision. That the

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aforsaid publication appeared in the DeSoto Times, which does and have a general circulation in DeSoto County where the land is situated and said publication clearly stated the object and purpose of the Complaint For Partial Vacating Of Subdivision Plats.

That more than five days have now expired from the last publication, being November 27, 1991, and more than five days have elapsed since the service of process upon all of the named Defendants, said cause is triable at this time pursuant to Section 19-27-31 of the Mississippi Code of 1972, Annotated and Amended. That there have been no objections filed to the vacating of said plat and that the only answer filed is that of United States of America and that the Plaintiff and the Defendant, United States of America, acting through its duly authorized attorney, have now reached an agreement whereby the United States of America raises no objection to the awarding of the relief prayed for in the Amended Complaint For Partial Vacating Of Subdivision Plats. That, in addition, the Defendant, Wee Care Child Development Center, Inc., has filed in this cause its Answer And Joinder To Amended Complaint For Partial Vacating Of Subdivision Plats and said Defendant has no objection to the granting of the relief hereinafter provided. That the relief requested in the answer of the Defendant, Wee Care Child Development Center, Inc., shall be addressed by separate decree of this Court and the entry of this decree shall in no wise be deemed a waiver of the prayer of said answer or the relief sought therein.

That the Plaintiff is the owner of Lots 9, 11, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 of Parkway Subdivision, Final Plat of Section "A" and as shown of record in Plat Book 17, Pages 9-12, and Plat Book 18, Pages 7-10, of the plat records of DeSoto County, Mississippi, located in the Office of the Chancery Court Clerk of DeSoto County, Mississippi, and to which reference is hereby made.

That the aforescribed lots are described by metes and bounds as shown by the description of J. F. Lauderdale, licensed surveyor, dated October 11, 1991, a copy of which was attached as Exhibit A to the Complaint For Partial Vacating Of Subdivision Plats and Amended Complaint

For Partial Vacating of Subdivision Plats.

That on or about the 11th day of October, 1978, Hugh Thomas and Bill Davis, as developers and owners, filed for record in the Office of the Chancery Clerk of DeSoto County, Mississippi, a subdivision plat known as Parkway Subdivision Final Plat of Section "A", which was duly recorded in Plat Book 17, Pages 9-12, and which recording took place on the 11th day of October, 1978, at 3:00 o'clock P.M.

That thereafter on or about July 18, 1979, Hugh Thomas, as owner and developer, filed for record in the Office of the Chancery Clerk of DeSoto County, Mississippi, a subdivision plat known as Parkway Subdivision Final Plat of Section "A" and which filing took place on the 18th day of July, 1979 at 3:05 P.M. and which plat was recorded in Plat Book 18, Pages 7-10 in the Office of the Chancery Clerk of DeSoto County, Mississippi.

That at the time of the filing of the aforesaid plats in Plat Book 17, Pages 9-12, and Plat Book 18, Pages 7-10, the City of Hernando, Mississippi had in effect subdivision and zoning regulations which required the developer of a subdivision to file with the City of Hernando a performance bond to insure the installation of streets, curbs and gutters, water and sewer, in any subdivision developed within the City of Hernando, Mississippi. That Parkway Subdivision is a subdivision within the city limits of the City of Hernando, Mississippi. For reasons unknown to the Plaintiff, the developers, Hugh Thomas and Bill Davis, and subsequently, Hugh Thomas, failed to file a performance bond to insure that the necessary public utilities, streets, curbs and gutters would be installed within said subdivision. That the Plaintiff purchased the aforesaid lots but, because of the lack of curbs and gutters, required streets, and lack of city water and sewage, she is unable to dispose of said lots. That the lots have previously been assessed by DeSoto County, Mississippi and the City of Hernando tax assessor as though the lots were serviced with city utilities, being water and sewer when in fact no such service existed to said lots.

That the aforesaid plats call for a proposed street to be installed

by the developer on the east side of North Parkway Street and which proposed street was to be known as Robinson Street, and, likewise, the developer failed to construct Parkway Cove, a street and cove located on the east side of North Parkway Street. That the City of Hernando has never opened the proposed Robinson Street as shown on the plat of said subdivision nor has the City of Hernando opened the street designated as Parkway Cove on the aforesaid subdivision plat. That the Plaintiff's lots are completely without city water and sewage at this time and it is not practical for the Plaintiff to install water and sewer and to curb and gutter and install those streets required by said plat under the present configuration for said subdivision. That, accordingly, the Plaintiff desires the plat of said subdivision to be partially vacated, excluding from said plats those lots owned by the Plaintiff and completely relieving said lots from the restrictive covenants of said subdivision.

That all rights of ways shown in the proposed Robinson Street and Parkway Cove and the title thereto shall become vested in the Plaintiff by decree of this Court upon the partial vacation of said subdivision plats.

That all lots owned by the Plaintiff within said subdivision are vacant lots with no improvements located thereon.

That the description of the Plaintiff's lots are identical in both subdivisions (Plat Book 17, Pages 9-12, and Plat Book 18, Pages 7-10). That there is no need nor necessity for Plaintiff's lots to continue to be a part of Parkway Subdivision. That the lack of public utilities, curb and guttering and streets within the subdivision render the property unfavorable for purchase in its present form and, accordingly, the vacating of said plats as to said lots is appropriate and shall be granted.

That the other land owners within the subdivision are Wee Care Child Development Center, Inc., Carolyn B. Burk, Bobbie Jean Fowler and Hernando Heights, Ltd., all of whom have been made Defendants herein and are properly before this Court as heretofore adjudicated.

That the relief prayed for in said Amended Complaint For Partial Vacating Of Subdivision Plats shall be and the same is hereby granted,

PREMISES CONSIDERED:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. That Parkway Subdivision, Final Plat Of Section "A" and as recorded in Plat Book 17, Pages 9-12 and Plat Book 18, Pages 7-10, in the Office of the Chancery Court Clerk of DeSoto County, Mississippi, be and the same are hereby amended by the partial vacating of said plats as to Lots 9, 11, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 and that said plats from and after the date of this decree shall be deemed to have been partially vacated by the omission of said lots from said plats and said lots shall be discharged of any restrictive covenants, building restrictions or conditions of said subdivision and as shown on the plat of said subdivision or recorded in the land records of DeSoto County, Mississippi.

IT IS FURTHER ORDERED that the metes and bounds description of Lots 16, 18, 20 and 22, which are hereby vacated by this Court from the aforesaid plats, is described as follows:

Beginning at a point in the north line of Section 18; Township 3 South, Range 7 West, said point being 2,271.63 feet west of the northeast corner of said section; thence south 1,237.4 feet along the west right of way of I-55 Highway to the southeast corner of the Parkway Subdivision property; thence west 651.68 feet along the south line of said subdivision to the point in the west right of way of East Parkway Street (60 feet wide) and the point of beginning of the following parcel; thence west 139.76 feet to the southwest corner of said subdivision; thence north 434.0 feet along the west line of said subdivision to the southwest corner of Lot 14 of said subdivision; thence east 321.0 feet to the southeast corner of said lot; thence southward 479.20 feet along the west right of way of East Parkway to the point of beginning.

That said description includes that portion of the proposed Robinson Street which the Court has vested in the Plaintiff by this decree.

IT IS FURTHER ORDERED that the metes and bounds description of Lots 9, 11, 13, 15, 17, 19, 21, 23, 24, 25, 26, 27 and 28 of said subdivision and which lots are hereby vacated by this Court from the aforesaid subdivision plats are described as follows:

Beginning at a point in the north line of Section 18; Township 3 South, Range 7 West, said point being 2,271.63 feet west of the northeast corner of said section; thence south 325.47 feet along the west right of way of I-55 Highway to the southeast corner of Lot 7 of Parkway Subdivision and the point of beginning of the following parcel: thence south 912 feet along said right of way to the southeast corner of said subdivision property; thence west 591.68 feet along the south line of said subdivision to a point in the east right of way of East Parkway (60 feet wide); thence southward 865.0 feet along the east right of way of said street to the southwest corner of Lot 7 of said subdivision; thence east 188.92 feet to the point of beginning.

That said description includes that portion of the proposed Parkway Cove which the Court has vested in the Plaintiff by this decree.

IT IS FURTHER ORDERED that title to that portion of the Proposed Robinson Street, as shown on the plat of said subdivision in Plat Book 17, Pages 9-12 and Plat Book 18, Pages 7-10, be and the same is hereby vested in the Plaintiff, Myrtis P. Wadsworth.

IT IS FURTHER ORDERED that the title to that area designated as Parkway Cove on the plat of said subdivision in Plat Book 17, Pages 9-12, and Plat Book 18, Pages 7-10, is hereby vested in the Plaintiff, Myrtis P. Wadsworth. That the area reflected on said subdivision plats as Parkway Cove and proposed Robinson Street is hereby abandoned for public use as a public street and the title of the same is hereby exclusively vested in the Plaintiff. That as to the proposed Robinson Street, that part or portion vested in the Plaintiff, Myrtis P. Wadsworth, is that part or portion lying north of the south line of said subdivision and reflected on the plat of said subdivision as being an area 30 feet in width north and south and 139.76 feet along the south line of said subdivision and 140 feet along the north line of said street right of way.

IT IS FURTHER ORDERED that Lots 3, 5, 7, 4, 6, 8, 10, 12 and 14 of said subdivision, which are owned by the Defendants, Wee Care Child Development Center, Inc. (Lot 3), Carolyn B. Burk (Lot 7), Bobbie Jean Fowler (Lot 5) and Hernando Heights, Ltd., a Limited Partnership (Lots 4, 6, 8, 10, 12 and 14), shall not be affected by the partial vacating of said plats, said lots shall remain a part of said subdivision subject to the restrictive covenants, building restrictions and conditions of record for said plat.

IT IS FURTHER ORDERED that this decree shall not be deemed a waiver of the right of Wee Care Child Development Center, Inc. to obtain the relief requested in its Answer And Joinder To Amended Complaint for a partial vacating of said subdivision plats as to Lot 3 and the entry of this decree shall in no way affect the right of said Wee Care Child Development Center, Inc. to proceed with the granting of the relief prayed for in said Answer.

IT IS FURTHER ORDERED that the lien of the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, as evidenced by its Deed of Trust of record in Deed of Trust Book 280, Page 179, in the Office of the Chancery Clerk of DeSoto County, Mississippi, shall not be affected by the entry of this decree.

IT IS FURTHER ORDERED that the Chancery Court Clerk of DeSoto County, Mississippi, pursuant to Section 19-27-31 of the Mississippi Code of 1972, Annotated and Amended, shall record this decree as a deed in the land records of DeSoto County, Mississippi, and he shall cause a memorandum of the entry of this decree to be noted on the face of the plat of Parkway Subdivision, Final Plat of Section "A", as recorded in Plat Book 17, Pages 9-12, and Plat Book 18, Pages 7-10, in the Office of the Chancery Clerk of DeSoto County, Mississippi.

SO ORDERED, ADJUDGED AND DECREED on this the 10 day of February, 1992.

*LEON E. HANNAFORD, SR.*  
LEON E. HANNAFORD, SR.  
CHANCELLOR

AGREED TO:

*Charles D. ...*  
ATTORNEY FOR MYRTIS P. WADSWORTH  
PLAINTIFF

*J. M. ...*  
ATTORNEY FOR UNITED STATES OF AMERICA ACTING THROUGH THE FARMERS HOME ADMINISTRATION, UNITED STATES DEPARTMENT OF AGRICULTURE  
ROBERT O. WIDELWELL  
UNITED STATES ATTORNEY

*John ...*  
ATTORNEY FOR WEE CARE CHILD DEVELOPMENT CENTER, INC.

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