

STATE MS. - DESOTO CO.  
FILED

IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI APR 8 10 20 AM '97

RICHARD EUGENE BELL, et.al.  
Plaintiffs

BK 314 PG 499  
W.E. DAVIS CH. CLK.

vs.

CIVIL ACTION # 96-11-1386

FRED W. ROBERTS, et. al.  
Defendants

**JUDGMENT  
VACATING ORIGINAL SUBDIVISION PLAT AND  
REMOVING CLOUD ON TITLE**

THIS STATUTORY ACTION came before the Court pursuant to Sections 19-27-31, and 11-17-31, MCA, by owners of subdivided land for vacation of an original subdivision plat and for removal of cloud on title. Upon review of the pleadings and orders entered in this cause, the Court hereby finds and adjudicates as follows:

PARTIES IN INTEREST

1. Plaintiffs are owners of real property in Desoto County, Mississippi described as Lots 2 and 3, First Revision of Boone Subdivision, as per plat recorded in Book 50 at Page 27, in the office of the Chancery Clerk of Desoto County, Mississippi, in Section 1, Township 3 South, Range 8 West.

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W E DAVIS, CLERK

2. Defendants Roberts are owners of real property in Desoto County, Mississippi described as Lot 1, First Revision of Boone Subdivision, as per plat recorded in Book 50 at Page 27, in the office of the Chancery Clerk of Desoto County, Mississippi, in Section 1, Township 3 South, Range 8 West. They have filed an answer not objecting to the relief sought by Plaintiffs.

3. Defendant Union Planters National Bank, as successor in interest to Leader Federal Bank for Savings, is a lien holder on Lot 3 of the named subdivision under a Deed of Trust recorded on April 15, 1996 in Book 822 at Page 233, in the office of the Chancery Clerk of Desoto County, Mississippi. Said Defendant has filed an answer not objecting to the relief sought by Plaintiffs.

4. Defendant AirPro Heating and Cooling, Inc. and Defendants Swindle are lienholders under construction liens recorded in Book 7 at Page 731 and as amended in Book 7 at Page 733, in the office of the Chancery Clerk of Desoto County, Mississippi. These Defendants also have filed an answer not objecting to the relief sought by Plaintiffs.

5. Default has been entered against Defendants Unknown Parties in Interest. Desoto County, Mississippi, the governmental authority having an interest in the matter, has filed a waiver of process and, being represented by counsel, does not object to the relief sought by Plaintiffs.

#### JURISDICTION & VENUE

7. The Court has jurisdiction over the parties as the Plaintiffs reside in Desoto County, Mississippi.

8. The Court has jurisdiction of the subject matter because the property in question is located in Desoto County, Mississippi and the causes of action occurred and accrued in Desoto County, Mississippi.

9. The Court has also jurisdiction over the subject matter by virtue of the provisions of Sections 19-27-31, and 11-17-31, MCA.

#### FACTS

10. In 1979 a parcel of land located North of Hernando, and on the West side of highway 51, was subdivided. The subdivision was named

"Boone Subdivision". It consisted of two (2) lots. The plat of the subdivision was recorded on Book 18 at Page 19 in the office of the Chancery Clerk of Desoto County, Mississippi. A copy of said plat is enclosed as Exhibit "A" hereto.

11. In 1995, said subdivision was revised. The revision was named "First Revision Boone Subdivision". It consists now of three (3) lots. The plat of the revised subdivision was recorded in Book 50 at Page 27 in the office of the Chancery Clerk of Desoto County, Mississippi. A copy of said plat is enclosed as Exhibit "B" hereto.

#### DESCRIPTION OF PROPERTY

12. The property in question is described as follows:

First Revision of Boone Subdivision, as per plat recorded in Book 50 at Page 27, in the office of the Chancery Clerk of Desoto County, Mississippi, in Section 1, Township 3 South, Range 8 West.

#### CLOUDS ON TITLE

13. There are clouds on the title to the property in question by reason of the following facts:

- (a) When the original subdivision was recorded, it listed as the owner of the property a person who actually no longer held title to the property.
- (b) When the plat of the revised subdivision was recorded, the owners failed to vacate the original plat.
- (c) When the plat of the revised subdivision was recorded, it failed to show Defendants Roberts as owners of part of the property.
- (d) When Plaintiffs, prior to the recording of the plat of the revised subdivision, conveyed a portion of their land to Defendants Roberts, the legal description in said instrument of conveyance was defective.
- (e) When Plaintiffs, prior to the recording of the plat of the revised subdivision, conveyed a portion of their land to Defendants Roberts, the conveyance was made to a trust and not to a trustee as required by law, and there was no evidence of a trust agreement of record as required by law.

#### DERAIGNMENT OF TITLE

14. Deraignment of Plaintiffs' title under Section 11-17-35, MCA is not required. All parties to this action who hold fee title to any of the property in question claim title under a common source.

#### GROUND FOR RELIEF.

15. Section 19-27-31, MCA.

Owners of land platted as a subdivision may, under oath, petition the Chancery Court for an alteration of the subdivision plat by setting forth the particular circumstances of the case, giving an accurate description of the property and of the plat to be altered, and listing the names of the persons to be adversely affected thereby, making them parties defendant, and publishing a summons one-time in a newspaper of general circulation in this county, clearly stating the objects and purposes of the complaint.

16. Section 11-17-31, MCA.

If a conveyance or other evidence of title to real property, or if a claim by a person not the rightful owner thereof, casts any doubt or suspicion on the title of the real owner, such real owner may have such conveyance or other evidence of title or claim cancelled and such cloud, doubt or suspicion removed from said title.

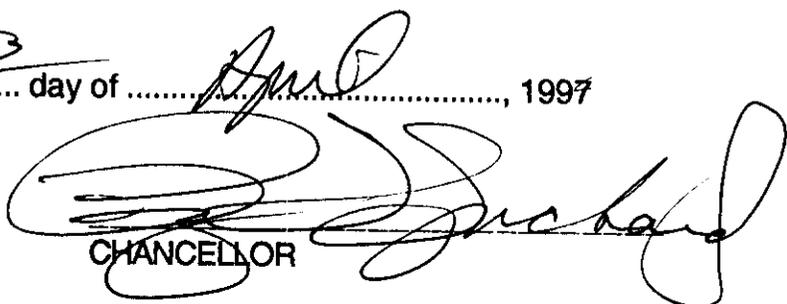
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

- (a) The original "Boone Subdivision" as recorded in Book 18 at Page 19 in the office of the Chancery Clerk of Desoto County, is hereby vacated.
- (b) The Clerk of the Court is directed to make the required entry

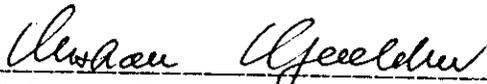
on the subdivision records to show the "Boone Subdivision" as recorded in Book 18 at Page 19 as vacated.

- (c) The revised subdivision named "First Revision Boone Subdivision" as recorded in Book 50 at Page 27 is delcared in full force and effect.
- (d) Title to Lot 1 of said subdivision is vested in Fred W. Roberts and Electa E. Roberts, trustees for The Roberts Family Trust.

SO ORDERED, this the 23 day of April, 1997

  
 CHANCELLOR

Submitted by:

  
 Christian Goeldner  
 Attorney for Plaintiffs

  
 Gerald W. Chatham  
 Attorney for Defendants Swindle  
 and AirPro Heating and Cooling, Inc.

*William H. Austin, Jr.*

William H. Austin, Jr.

Attorney for Desoto County Board of Supervisors

PREPARED BY AND, AFTER RECORDING, RETURN TO:  
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Indexing: Section 1 Township 3 South, Range 8 West

STATE OF MISSISSIPPI COUNTY OF DESOTO  
I HEREBY CERTIFY that the above and foregoing is a true  
copy of the original filed in this office.

This the 5th day of April, 1997

W. E. DAVIS, Clerk of the Chancery Court

By J. Keefe D.C.

