

G.W. SCURLOCK,

PLAINTIFF,

VS.

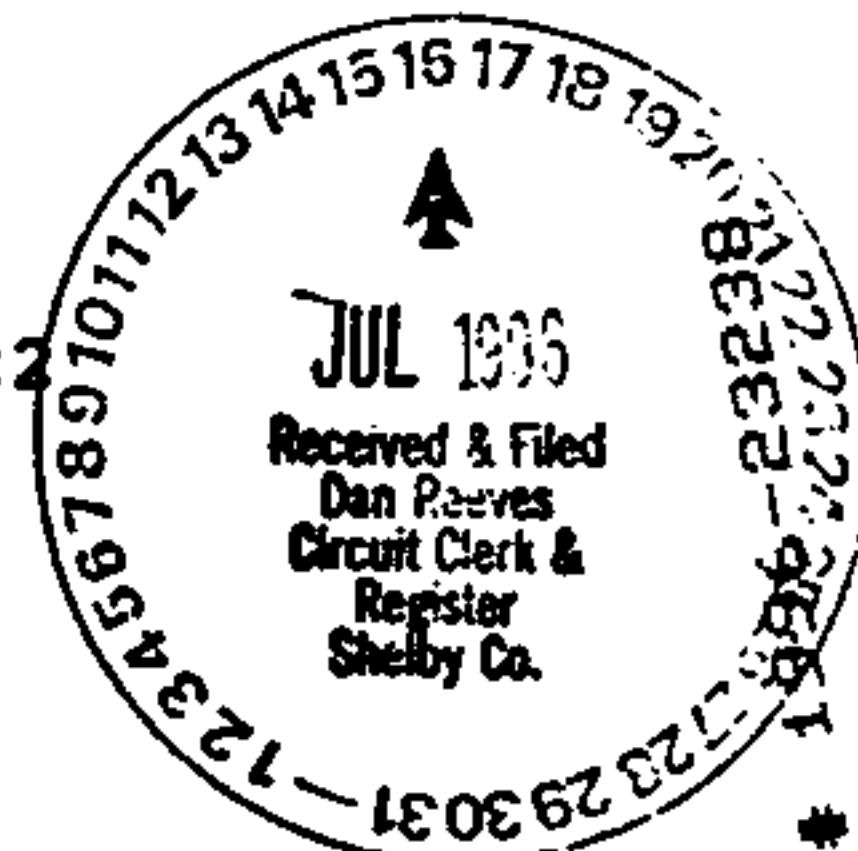
BILLY RAY SCURLOCK and
MARY EVELENE SCURLOCK,

DEFENDANTS.

IN THE CIRCUIT COURT FOR

SHELBY COUNTY, ALABAMA

CV-95-722



JUDGMENT

This case came before the Court upon the pleadings and proof, including ore tenus testimony presented by the parties, the video-taped deposition of the defendant Mary Evelene Scurlock of November 17, 1995, the deposition of Dr. Nasrollah Eslami, and other exhibits which were received in evidence, and upon consideration thereof, and upon consideration of the arguments presented by the attorneys for the parties and by the guardian ad litem, the Court FINDS as follows:

1. The mental competency of said Mary Evelene Scurlock, who was originally joined as a party plaintiff in this litigation, was questioned before this case went to trial, and upon consideration of a motion duly filed, the Court realigned said Mary Evelene Scurlock as a party defendant and appointed the Honorable Mitchell A. Spears, a competent attorney who practices law in Shelby County, Alabama, as her guardian ad litem, to represent and defend her interests in this litigation. Discovery was completed, the case went to trial, and the pleadings were not further amended.

2. At the conclusion of the evidence, the case was submitted for the Court's determination as to whether or not the Warranty Deed from said Mary Evelene Scurlock, as grantor, which is dated April 14, 1995, and which purports to convey more than twenty-seven

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acres of real estate, as described therein, to the defendant Billy Scurlock, as grantee (said deed being further identified as Instrument # 1995-21584, Office of Judge of Probate, of Shelby County, Alabama), should be declared by the Court to be invalid, and should be set aside and held for naught, as originally prayed for in the Complaint which was filed, and as now prayed for by the guardian ad litem, on behalf of said Mary Evelene Scurlock.

3. Mary Evelene Scurlock is illiterate. She was within three months of her eightieth birthday when she affixed her signature to the Warranty Deed in question, and substantial evidence was presented by members of her family to the effect that her mental faculties had then been deteriorating for several years; she had reached the point that she became easily confused and could not remember important incidents.

4. Dr. Nasrollah Eslami, a neurologist, saw Mrs. Scurlock as a patient on October 8, 1995, some six months after she signed the document in question, at the referral of Dr. David Bronson, who was Mrs. Scurlock's family physician, for the purpose of evaluating her mental condition. Dr. Eslami examined and tested Mrs. Scurlock on two occasions, and his diagnosis was that Mrs. Scurlock has Alzheimer's Disease and is demented, which means

"...that the patient has profound memory loss. Sometimes they have -- they really don't have a good insight to what they are doing, so this is a good example, that someone brings a document and tells them to sign it and they sign it. They didn't really think about the consequences for example. . .their judgment is impaired, you know, it affects the judgment, the insight, the decision making. This is why, you know, in cases like this, they are really mentally incompetent. . .".

Dr. Eslami opined that he does not believe that Mrs. Scurlock is competent to manage her own affairs, and further, in response to a hypothetical question, that she was not competent at the time

when she signed the deed in question, and further, that she needs to have a guardian appointed over her affairs.

Dr. Eslami's testimony was not refuted.

5. None of the arrangements leading up to the execution of the deed in question were made by Mrs. Scurlock. On the day when she signed the deed, she was picked up by her step-son, at the request of Billy Scurlock, the grantee, and was transported to a law office in Montevallo. Her step-son, Willie Edward Scurlock, testified that Mrs. Scurlock was in the lawyer's office not more than a minute and a half before he came into the office to witness her signature on the deed. He further testified that the persons present in the office when she signed the deed were himself, the lawyer, and Billy Scurlock (the grantee); he stated that he did not know whether the lawyer told her that the document which she signed was a deed and that Billy Scurlock (the grantee) told her that the conveyance was for a portion of the property.

Mrs. Scurlock testified that she didn't know what the papers were that she signed, that no one explained to her what she was signing, that if she had known it was a deed to Billy Ray she wouldn't have signed it, that she didn't know the lawyer.

The lawyer who prepared and notarized the deed did not testify.

6. Mrs. Scurlock received no monetary consideration or other direct benefit for signing the deed. The grantee, Billy Scurlock, is her step-grandson; she was not indebted to him and apparently has no especially close relationship with him, and the document purporting to be her last will and testament, which is dated March 30, 1966, does not designate him as a beneficiary.

7. The Court **FINDS** that the burden of proof in this case is

upon the defendant Billy Ray Scurlock to show that the execution of the deed in question by the grantor, Mary Evelene Scurlock, was made at a time when she was lucid and competent, and that such burden has not been sustained. See Abbott v. Rogers, 1996 W.L. 342259 (Ala. Civ. App., 1996).

The Court further FINDS that said Mary Evelene Scurlock was in fact incompetent on April 14, 1995, at the time when she affixed her signature to the Warranty Deed in question, that she was unable to and did not understand and comprehend her execution of said deed, that she was then and there so impaired that she was incapable of acting intelligently and voluntarily, and that said deed is due to be declared to be invalid.

It is therefore ORDERED, ADJUDGED, and DECREED as follows:

A. Said Warranty Deed from Mary Evelene Scurlock, as grantor, dated April 14, 1995, to be Billy Scurlock, as grantee (said deed being further identified as Instrument # 1995-21584, Office of Judge of Probate, of Shelby County, Alabama, a copy of which is attached hereto as Exhibit A and by reference hereto is made a part hereof, is hereby DECLARED to be invalid and is set aside and held for naught, and full title in and to the real estate as described therein is RESTORED to said Mary Evelene Scurlock.

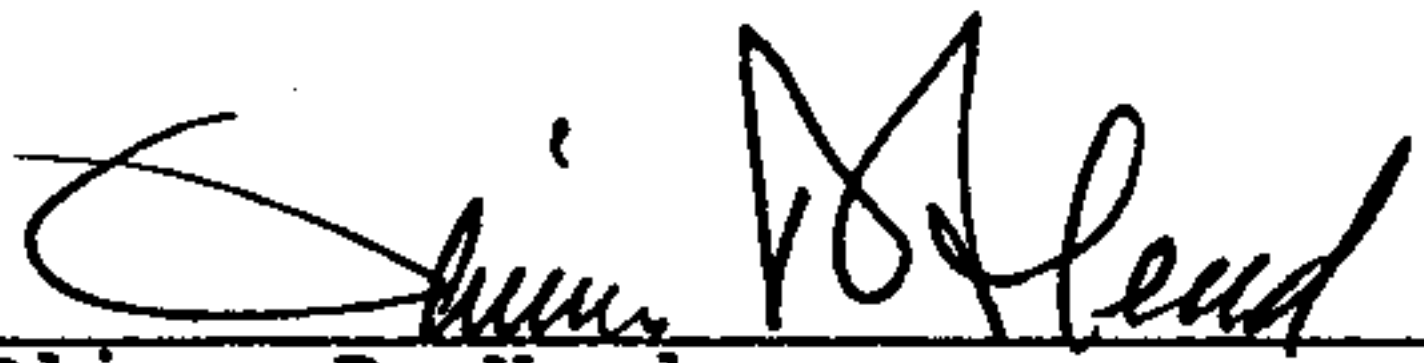
B. The guardian ad litem heretofore appointed by the Court in this cause to represent and defend the interests of said Mary Evelene Scurlock in this litigation, namely, Honorable Mitchell A. Spears, is entitled to receive as a fee for his services rendered the sum of \$1,500.00, which the Court FINDS to be a reasonable fee for such services rendered by said guardian ad litem, such fee to be assessed as a part of Court costs in this cause.

C. Costs of the deposition of Dr. Nasrollah Eslami which was introduced into evidence in this cause in the amount of \$305.00,


and costs of the video deposition of Mary Evelene Scurlock which was introduced in this cause in the amount of \$315.00, are taxed as a part of Court costs herein and shall be reimbursed to Honorable James C. Pino, attorney for the plaintiff, who has paid such costs.

D. Costs of Court accrued, including the guardian ad litem fee and deposition costs as provided above herein, are taxed to the defendant Billy Ray Scurlock, for which execution may issue.

DONE and ORDERED this 16th day of July, 1996.



Oliver P. Head
Circuit Judge

Certified a true and correct copy
Date: 7-18-96


Dan Reeves, Circuit Clerk
Shelby County, Alabama

PLAINTIFF'S
EXHIBIT

1.000

WARRANTY DEED

Exhibit "A"

This instrument was prepared by
Steven R. Sears, attorney
655 Main Street, BX Four
Montevallo, AL 35115+0004
telephone: 665-1211
without benefit of title evidence.

Please send tax notices to:

Billy Scurlock
2627 Scurlock Road
Helena, AL 35080

Inst • 1995-21504

State of Alabama)
County of Shelby)

Know all men by these presents, that in consideration of love and affection and payments to his aunts and uncles at my direction, to the undersigned grantor in hand paid by the grantee herein, the receipt whereof is acknowledged, I, Mary Evelene Scurlock, an unremarried widow, of 2655 Scurlock Road, Helena, AL 35080, do grant, bargain, sell, and convey unto Billy Scurlock of 2627 Scurlock Road, Helena, AL 35080 the following described real estate situated in Shelby County, Alabama, to-wit:

The NW ¼ of the NW ¼ of §27, Twp 20S, R3W, in the City of Helena, less and except that land earlier deeded away, including that land, ±4 acres, now owned by William David Kent of 2699 Scurlock Road; that land owned by Marcus R Parks, BX 102, Maylene, AL 35114 by virtue of a deed recorded on November 1, 1986 at book 112, page 638 of the Shelby County Probate Records; that land owned by G W Scurlock, 253 Scurlock Road, Helena, AL 35080 by virtue of a deed recorded on December 7, 1990 at book 321, page 139 of the Shelby County Probate Records; that land owned by Gail Darlene Turner, 6255 Scurlock Road by virtue of a deed recorded on 21 October 1988 at book 212, page 916 of the Shelby County Probate Records; and that land owned by Janet S Cardwell Park, 2633 Scurlock Road, Helena, AL 35080 by virtue of a deed recorded on December 11, 1989 at book 289, page 108 of the Shelby County Probate Records.

Subject to a right of way in favor of the City of Helena, Alabama, for Scurlock Road as it now exists; and subject to two gas line easements that cross the property.

Source of title: A warranty deed from Aaron Scurlock to grantor herein, executed November 1, 1956 and recorded on November 26, 1956 at deed book 183, page 374 in the Shelby County Probate Office.

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No part of the property conveyed herein forms any part of the homestead of any grantor. Each grantor owns other property which does form homestead.

To have and to hold to the said grantee, his heirs and assigns forever.

I, Mary Evelene Scurlock, do for myself and for my heirs, executors, and administrators covenant with the said grantee, his heirs and assigns, that I am lawfully seized in fee simple of said premises; that they are free from all encumbrances, unless otherwise noted above; that I have a good right to sell and convey the same as aforesaid; that I will and my heirs, executors, and administrators shall warrant and defend the same to the said grantee, his heirs and assigns forever, against the lawful claims of all persons.

In witness whereof, I have set my hand and seal, this 14 April 1995.

Witness:

William E. Scurlock

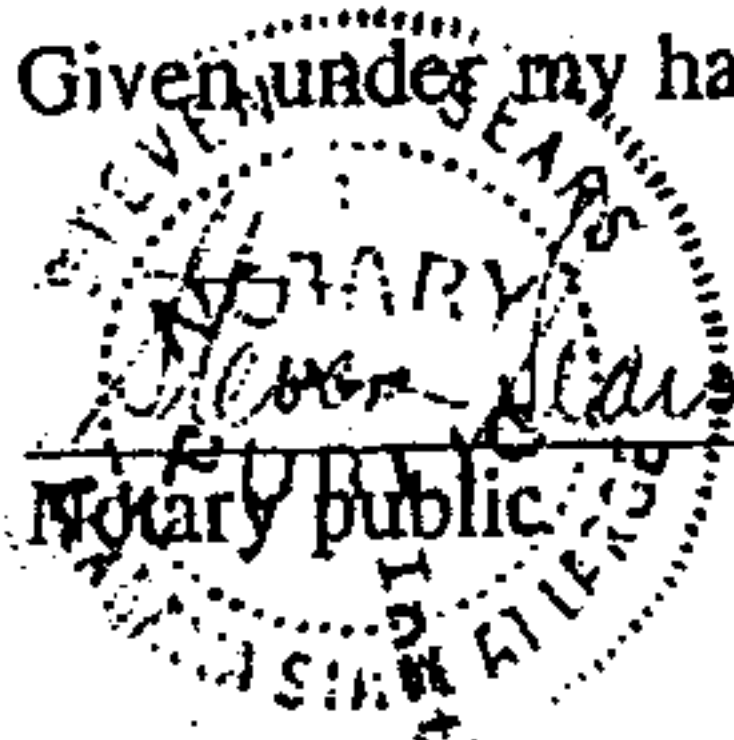
Mary Evelene Scurlock (Seal)
Mary Evelene Scurlock

State of Alabama)
County of Shelby)

I, the undersigned notary public for the State of Alabama at Large, hereby certify that Mary Evelene Scurlock, whose name is signed to the foregoing conveyance, and who is (made) known to me, acknowledged before me on this day, that, being informed of the contents of the conveyance, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 14 April 1995.

My Notarial Commission expires March 7, 1998



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