

STATE OF ALABAMA
SHELBY COUNTY

AFFIDAVIT OF OLIVER P. HEAD

Before me, the undersigned authority, a Notary Public in and for said County, in said State, personally appeared Oliver P. Head, who, after being by me first duly sworn, deposes and says as follows:

My name is Oliver P. Head, my wife is Ann B. Head, and our residence mailing address at P.O. Box 1435, Columbiana, AL 35051.

My wife and I bought a parcel of real estate on the North side of U. S. Highway 280 from Billy Gene Grimes and his wife, Linda Grimes, on October 1, 1974, as shown by our deed which is recorded in Deed Book 289, at page 50, office of Judge of Probate of Shelby County, Alabama. The parcel is described in said deed as follows:

Commencing at the NE corner of SW 1/4 of NW 1/4; Section 28, Township 19 South, Range 1 East; thence Southerly along East line of said SW 1/4 of NW 1/4 a distance of 1060 feet, more or less, to an iron stob, which is the point of beginning of the property herein to be conveyed; thence continue Southerly along the East line of said forty a distance of 100 feet, more or less, to a point on the North right of way line of Project F-214 (20); thence South 84 deg. 44 min. West along the Northern right of way of Project F-214 (20) a distance of 164 feet, more or less, to a point; thence North 109 feet, more or less, to a point; thence East 164 feet, more or less, to a point on the East line of said forty being the point of beginning, being the same property heretofore conveyed to the grantors, as shown by deed recorded in Deed Book 282 at page 482, Office of Judge of Probate of Shelby County, Alabama.
Said strip of land lying in the SW 1/4 of NW 1/4, Section 28, Township 19 South, Range 1 East, and containing 0.40 acres, more or less, the north and east lines of, said property being marked by an existing fence.

At the time when we purchased said parcel and assumed possession thereof on October 1, 1974, the Northeast corner of said parcel was marked by an iron stob, and the North and East ~~lines~~ of said parcel were marked by a fence, as indicated in our deed description, as set forth hereinabove.

I believe that a mobile home had been situated on said parcel prior to the time when my wife and I became the owners thereof, and after we acquired our ownership, we have rented said parcel to others, including Mr. and Mrs. Jerry Brasher and Mr. and Mrs. David Dunn; I have in my files records verifying that said parcel has been rented on a month-to-month basis almost

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continuously since February, 1984. The present renters are Mr. and Mrs. David Dunn, who presently are sub-leasing the property to someone else.

Frank and Edwina Chappell at some point in time acquired ownership of the parcel adjacent to our parcel, as described hereinabove, and lying to the East thereof, and I first became aware that there was a boundary line problem between our said parcel and the Chappell parcel in September, 1987, when attorney C. M. Moncus contacted me by telephone on behalf of Mike Davis, who he represented, and who was then apparently anticipating buying the Chappell parcel. I believe that Mr. Moncus told me that a survey had been run by a surveyor employed by Mr. and Mrs. Chappell or Mr. Davis and that the survey showed the West line of the SE 1/4 of the NW 1/4 of Section 28, Township 19 South, Range 1 East to be some 70 feet West of the fence which marked our East property line. I then contacted Frank Chappell, who was a personal friend and client of mine, and Frank and I went to the boundary line in question on September 13, 1987. I am attaching to this affidavit as Exhibit "A" a copy of my letter of September 14, 1987, to Mr. C. M. Moncus, and I state that the factual information as set forth in said letter is true and correct.

I am also attaching to this affidavit as Exhibit "B" a copy of my letter of September 15, 1987, to Mr. and Mrs. Frank D. Chappell concerning this matter, and I also attach as Exhibit "C" a copy of a letter to me from attorney James M. Tingle, dated October 22, 1987; a copy of my reply letter of October 23, 1987 to Mr. James M. Tingle is attached hereto as Exhibit "D", and I state that the factual information as set forth in said letter is true and correct.

On October 26, 1987, I talked by telephone with Gerald Moore, who I believe owned the parcel of acreage to the North of the parcel owned by my wife and me (and whose property is also adjacent to the West line of the Chappell parcel), and Mr. Moore told me that he had talked with Frank Chappell and that he had told Frank that " . . . As far as he is concerned, the fence is the line".

I visited the property again on October 27, 1988, and talked with my tenant, Jerry Brasher. I am attaching hereto as Exhibit "B" a copy of my file memo which I made on October 27, 1988, concerning my conversation with Jerry Brasher and the observations that I made on October 27, 1988, and I state that the factual information as set forth in said file memo is true and correct.

I have recently been informed that the Chappell property is for sale, and I make this affidavit to assert my position that the East line of the parcel which my wife and I own is where the fence line was when we bought our parcel in 1974. Apparently there is, or may be, a boundary line dispute as to the location between our said parcel and the Chappell parcel which lies in the SE 1/4 of the SW 1/4 of Section 28, Township 19 South, Range 1 East,


Affiant - Oliver P. Head

Sworn to and subscribed before me
this the 30th day of July, 1999.


Notary Public

Exhibit "A"

September 14, 1987

Mr. C. M. Moncus
Corley, Moncus, Bynum & Davis
Suite 300, 2100 16th Avenue South
Birmingham, Alabama 35205

Re: Real estate sale to J. L. and G. M. Davis

Dear Mac:

This letter will follow up our telephone conversation of today concerning the above matter, in which I understand that you are representing Mike Davis in closing the proposed real estate sale from Frank and Edwina Chappell to J. L. and G. M. Davis.

I want to re-affirm what I told you when we talked by telephone, that there is apparently a boundary line problem involving property which my wife and I have owned since 1974, if the recent survey which was obtained in connection with this closing is correct.

I am enclosing a copy of the deed to Ann and me which is recorded in Deed Book 289 at page 50 in the Probate Office of Shelby County, Alabama, for your information, and as you can see, this deed indicates that the North and East lines of the property were marked by an existing fence (in 1974).

I went to the scene of the property yesterday afternoon with Frank Chappell, and Frank showed me the location of the recent survey line which apparently goes about 70 feet +/- to the West of the old fence which has marked the East line of our property: In other words, if my wife and I accept the survey line as being the true and correct property line, we will be giving up about half of our lot, and we simply can't do this. The old fence line marking the North line of our property is still standing and is plainly visible, as is the Northeast corner of our property, which is plainly marked by an old iron pipe. The fence which marks the East line of our property is down, but the fence wire is still there, on the ground, showing where the fence has been.

You mentioned that you understood that a representative of Cahaba Title Company had contacted me about this matter several days ago and had indicated that there was not any problem; I acknowledge

COPY

that I was contacted several days ago by someone from Cahaba Title, but I certainly did not intend to convey the impression that my position was anything other than as stated in this letter.

I will appreciate your sending me a copy of the survey plat, if you have permission to do so.

I certainly regret the fact that I am personally involved in this problem, and I hope that all of you understand my position; however, I feel that I must put everyone on notice that my wife and I do claim to own the property, as designated in this letter.

Thank you very much.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Oliver P. Head", written over a horizontal line.

Oliver P. Head.

OPH/lb

cc: Mr. and Mrs. Frank Chappell
Cahaba Title (Attn. Ms. Martha Ferguson)

Exhibit "B"

September 15, 1987

Mr. and Mrs. Frank D. Chappell
Route 1, Box 118
Sterrett, Alabama 35147

Re: Real estate sale to J. L. and G. M. Davis

Dear Frank and Edwina:

As you know, I "started out" representing you in the above matter, but due to the awkward situation that has arisen as the result of a possible boundary line dispute between property which is personally owned by Anne and me and the property which you own, I am sure that all of us agree that I should officially withdraw as your attorney in this matter.

It is my understanding that you are set up to close the sale of a portion of the property involving the boundary line in question at the office of the Davis's attorney within the next few days, and I think it best that I should officially notify you that you should get someone else to represent you at this closing.

I appreciate very much your wanting me to handle this matter for you before we realized that we had a personal problem involved, and I certainly treasure your continued friendship.

Sincerely yours,



Oliver P. Head.

OPH/lb

cc: Mr. C. M. Moncus

COPY

Exhibit "C"

BARNETT, TINGLE, NOBLE & SEXTON

ATTORNEYS AT LAW

1800 CITY FEDERAL BUILDING
2026 SECOND AVENUE NORTH
BIRMINGHAM, ALABAMA 35203

TELEPHONE
AREA CODE 205
322-0471

ROBERT C. BARNETT
JAMES M. TINGLE
G. WILLIAM NOBLE
ROBERT E. SEXTON
JAMES R. O'NEAL
ROGER L. BAYNE
WILLIAM M. ACKER, II

October 22, 1987

Mr. Oliver P. Head
Wallace, Ellis, Head & Fowler
P. O. Box 587
Columbiana, AL 35051

Dear Oliver:

A local lawyer referred Mr. Frank D. Chappell to my office relative to a boundary line dispute with you along a section line in Section 28, Township 19, Range 1 East. First of all, I advised Mr. Chappell that I was a very close personal friend of you and your firm and would in no wise get involved in a controversy with you. I could not do it ethically or morally.

Mr. Chappell did persuade me to write you a letter to ask you to reconsider the position that you took in your recent letter addressed to Mac Moncus. Mr. Chappell's position is that the fence line is most irregular and could not represent a section line. His chain of title is perfect and your conveyance runs only to the section line. In any event, as a friend I request you to reconsider your position as it substantially effects your good friend, Mr. Chappell.

Best wishes.

Yours very truly,


James M. Tingle

JMT:pkp

Exhibit "D"

WALLACE, ELLIS, HEAD & FOWLER
ATTORNEYS AT LAW
POST OFFICE BOX 587
COLUMBIANA, ALABAMA 35051

TELEPHONES
(205) 669-6783
(205) 669-4932

FRANK C. ELLIS, JR.
CLARENCE F. HEAD
CONRAD M. FOWLER, JR.
J. FRANK HEAD

October 23, 1987

FRANK HEAD (1881-1979)
WALLES M. WALLACE, JR. (1919-1986)

Mr. James M. Tingle
Attorney at Law
1600 City Federal Building
2026 2nd Avenue North
Birmingham, Alabama 35203

Dear Buddy:

In response to your letter of October 22 concerning a boundary line dispute with Frank D. Chappell, I think you know that I would do practically anything to avoid a dispute about anything with anyone, especially with Frank and Edwina Chappell, who have been personal friends of mine, as well as clients, for a long time. However, I simply can't afford to give up voluntarily almost half of the small lot on Highway 280.

When my wife and I bought the lot in 1974, the line in question was marked by an existing fence, as was stated in our deed. This fence is a very old fence, and I understand from people in the area, it had been in existence for a long time and marking the property line for a long time. My position is, of course, that the fence has been established as the property line by adverse possession, regardless of the recent survey, and I feel this mainly to be a question of law rather than a disputed fact.

As stated above, if the property line is where the surveyor indicates it to be, Ann and I would lose approximately 70 feet, more or less, and would have practically nothing left. On the other hand, the Chappells' have several hundred feet of highway frontage, according to my understanding.

The fence that I refer to is still plainly visible, and I invite you to visit the scene and inspect it: It has apparently been knocked to the ground fairly recently, but it is still there. I am not going to do anything in the immediate present to re-establish the fence as it has been for the past many years, but eventually, I expect to do this. You state that the fence is irregular, and I have really not observed said fence as it extends Northerly from our property, but it is certainly not irregular as it marks the East boundary of our property.

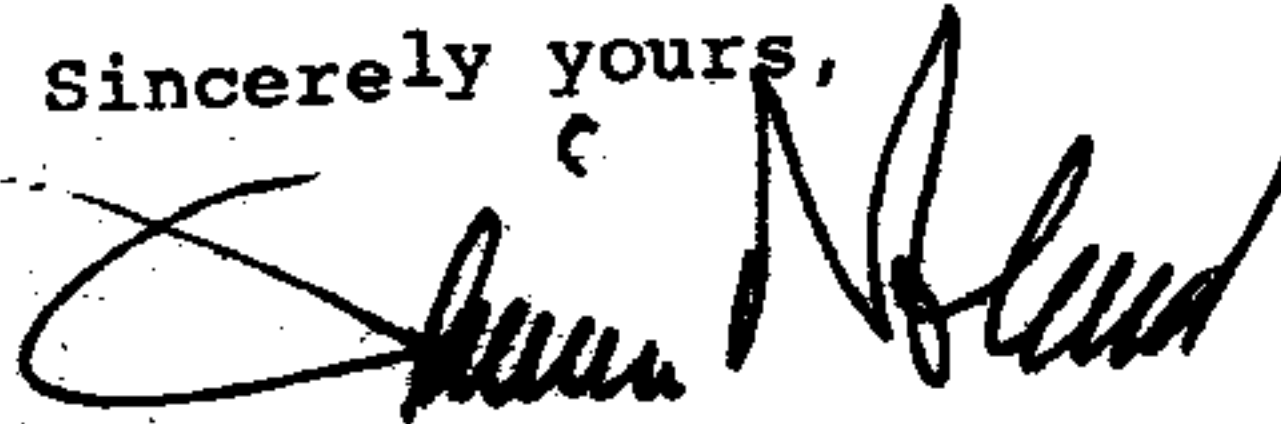
Again, I want you and the Chappells' to know that I certainly feel uneasy about this situation, as I am sure that they do. I did not realize that there was any problem at all until about two

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or three weeks ago when Frank showed me the survey, and I want all of you to know that I sincerely feel that I am morally, as well as legally right in believing that the fence does mark the true and correct boundary line, regardless of the survey.

Thank you for your consideration concerning this matter.

Sincerely yours,



Oliver P. Head.

OPH/lb

cc: Mr. and Mrs. Frank C. Chappell

Note to Mr. and Mrs. Chappell:

Dear Frank and Edwina:

I really can't express to you how much I regret this situation, and I sincerely hope that it will not affect our friendship, regardless of how it is resolved. It certainly won't affect friendship, as far as I'm concerned.

In thinking about this, it occurs to me that you might feel some strain and uneasiness by my representing you in the law suit which I recently filed on your behalf against Samuel Douglas Harris and others. I am sure that you might feel that it would be difficult for me to be trying to represent you in a law suit when we are having a personal dispute about a property line, and I feel that I should withdraw as your attorney, without any charges to you, of course. Please make arrangements to have some other lawyer represent you in the law suit, let me know who the lawyer is, and I will turn your file over to him. I make this offer to withdraw as your attorney without any hard feelings on my part, but because I feel that it is the ethical thing that I should do.

Best of luck to you always.

Exhibit "E"

File Memo - Grimes (OPH)

10/27/88

This afternoon I went to the Grimes property to see whether or not Jerry Brasher still had his trailer on my lot, and when I got there, I found Jerry working on his car. He has moved his trailer off of my lot just beyond the West line of my lot on the Jason and Mary Grimes property. Jerry was very friendly and said that when he had gotten the notice that he had to move, he didn't have any money to pay the rent, and he had moved his trailer.

Jerry walked with me over to the East line of my lot. There is an old fence running along the North line of my property, and I believe the fence extends on to the West, to mark the North line of the Jason Grimes lot (although I did not go on the Jason Grimes lot). Jerry said that the two lots (i.e., my lot and the Jason and Mary Grimes lot) were originally one lot and were bought from Preston Moore. He stated that the Grimes' had divided the two lots years ago with Billy Grimes, who sold to me, taking the East half of the property and Jason getting the West half.

Jerry said that "Cap" Grimes had originally had his house where present 280 highway is now located, out in the highway. The highway apparently took the Cap Grimes house, and Jerry suggested that the 280 highway right of way map might show this. I need to get a copy of the 280 highway map, to see what it shows. I believe that Jerry said that Cap Grimes had died this past year, but that Billy Grimes is still around.

Jerry showed me the iron pipe at the NE corner of my lot that he said that Cap Grimes had placed there years ago. The old fence marking the North line of my property corners at this pipe and then goes South toward the right of way. This old fence going South toward highway 280, which marks the east line of my lot, is "down", but the wire is still on the ground, with some of the old fence posts still there. The old fence wire on the ground extends at least half way down the East side of the lot, and Jerry said that the fence had originally gone to a pine tree with the top broken out up near the right of way. I took several photographs of this old wire along the East line of my lot and also made some other photographs of the place where Jerry's trailer had been, which is well cleared off, and a fence which has been put at some point in time marking the West line of my lot and the East line of the Jason and Mary Grimes lot. Jerry said that this fence is approximately where the property line should be.

I asked Jerry about where the Frank Chappell survey line had been: we couldn't find any evidence of where this survey line was, and Jerry said that some of the children had pulled up the stakes. He said that the survey line was very close to where his trailer had been, some 20 or 30 feet to the East of it.

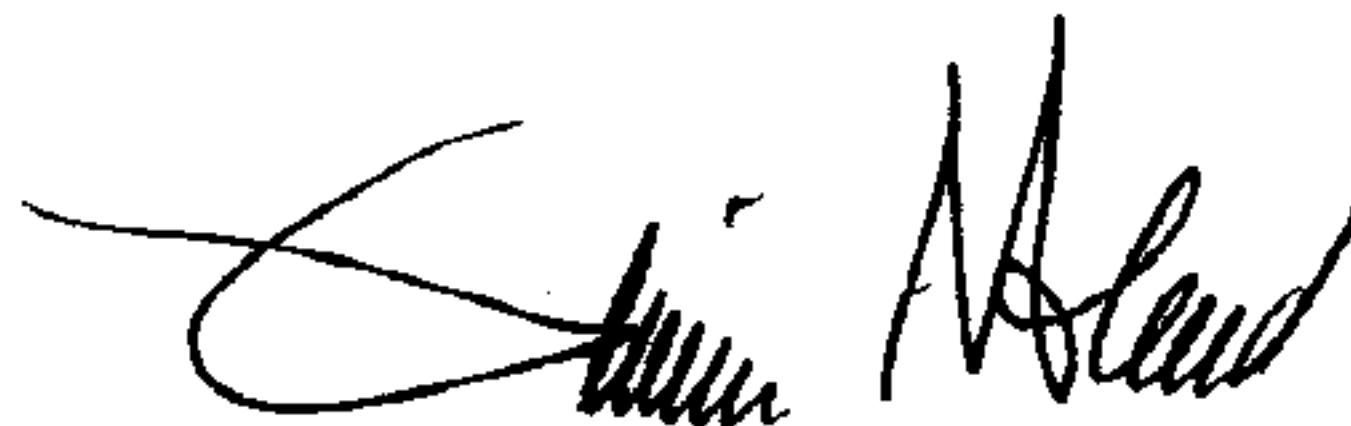
There is evidence of a survey line, with some yellow markings, near the East line of my lot, and I don't know what this survey means, or who made it: it apparently is not in the place where the Frank Chappell survey was made.

There is a cleared off fire lane type lane going from the North line of my lot in a Northerly direction, and I can't tell whether this fire lane was a part of the Frank Chappell survey or not, as it looks like it would be to the East of where Jerry thought the Frank Chappell survey line was. There are some yellow paint marks along the Western edge of this fire lane. Jason Grimes came over while we were out there. He was very friendly and walked over and looked at old fence line along the East line of my property and the iron pipe stob at the NE corner. Both Jerry and Jason said that this old fence line had always been the East line of my lot.

I need to get my lot cleaned off, as it is grown up in some places and there are piles of garbage and trash and debris at various places on the lot.

There is no evidence that Frank Chappell has done anything since his survey line was run several months ago.

Another thing I need to do is set up an appointment with Gerald Moore and get him to go out and look at the lines with me to see what he has to say.



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