


STATE OF ALABAMA
COUNTY OF SHELBY


20090420000144030 1/12 \$46.00
Shelby Cnty Judge of Probate, AL
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AFFIDAVIT

Before me, the undersigned authority, in and for said County and State, personally appeared William R. Justice, who, being known to me and being by me first duly sworn, deposed and said as follows:

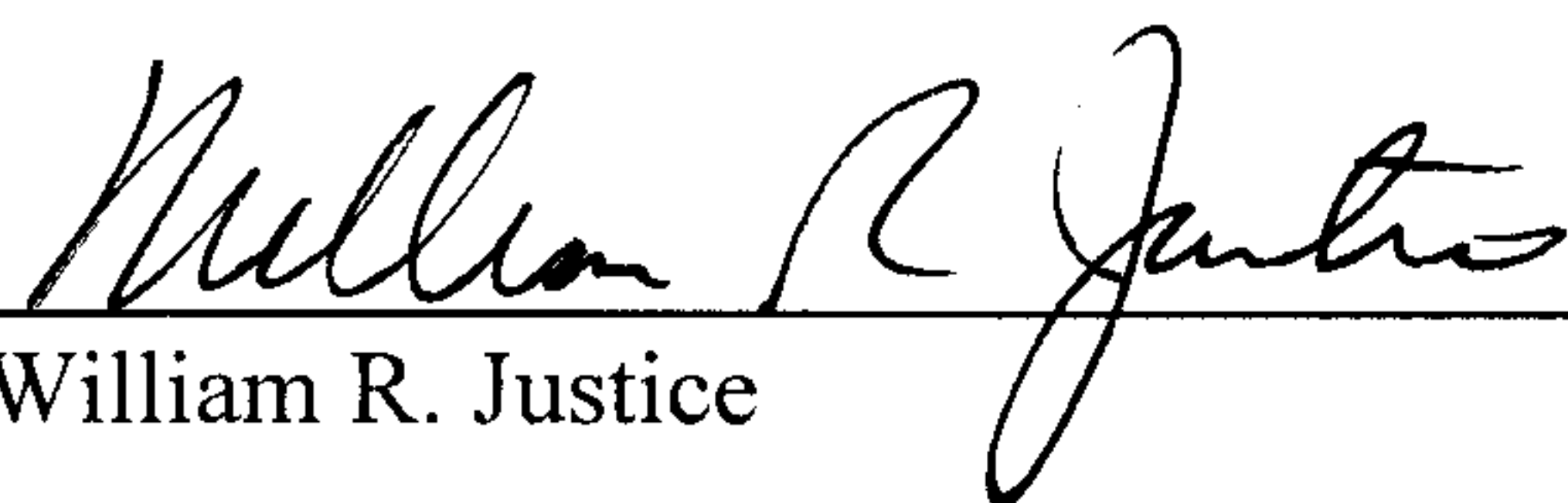
My name is William R. Justice. I am an attorney practicing in Shelby County, Alabama, and have personal knowledge of the following facts. I was one of the counsel of record for Deerwood Lake Land Company, the defendant in a case styled Randall H. Goggans v. Deerwood Lake Land Company, Inc., Circuit Court of Shelby County, Alabama, Case No. CV-06-1368. The Plaintiff Randall H. Goggans (hereafter "Goggans") owned the East $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 13, Township 19 South, Range 1 East and the West $\frac{1}{2}$ of the SW $\frac{1}{4}$ (except for a $5\frac{1}{4}$ acres parcel in the NE corner) of Section 18, Township 19 South, Range 2 East, Shelby County, Alabama (denominated Parcel I in the complaint). The Defendant Deerwood Lake Land Company (hereafter "Deerwood Lake") owned and continues to own roadways and certain other properties in the East $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 18, Township 19 South, Range 2 East, and the West $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 18, Township 19 South, Range 2 East, Shelby County, Alabama (denominated Parcel II in the complaint). Goggans claimed to own and sought a judgment determining him to own "a perpetual, non-exclusive easement, running with the land for ingress to and from Parcel I by way of the Hammermill Easement and the roadway existing on Parcel II which accesses Parcel I." A copy of the complaint is attached hereto as Exhibit A. Goggans claimed to own such an easement over the lands of Deerwood Lake by virtue of prescription, implication, and grant. The claim of easement by grant was based upon a document dated December 6, 1966, attached as exhibit B to a deed from Thomas

Land Company, L.L.C. to Goggans recorded as Instrument # 20060322000135470 in the Probate Office of Shelby County, Alabama.

Deerwood Lake denied that Goggans had any easement over its properties. A copy of its answer to the complaint is attached hereto as Exhibit B.

The case came before the court for trial on August 27, 2007. By order dated and entered August 28, 2007, Circuit Judge Dan Reeves granted Deerwood Lake's motion for a verdict in its favor at the close of Goggans's case. A copy of that order is attached hereto as Exhibit C. Goggans appealed the decision and, pending the appeal, conveyed Parcel I to Brightwater Properties, LLC, by deed recorded as Instrument # 20071228000583290 in the Probate Office of Shelby County, Alabama. Brightwater was substituted for Goggans in the appeal. The Alabama Court of Civil Appeals affirmed the decision of the Shelby County Circuit Court with no opinion, Brightwater Properties, LLC v. Deerwood Lake Land Company, Inc., Docket No. 2070370. A copy of the decision of the Alabama Court of Civil Appeals is attached hereto as Exhibit D.

This the 20th day of April, 2009.


William R. Justice

Sworn to and subscribed before me
this 20th day of April, 2009.

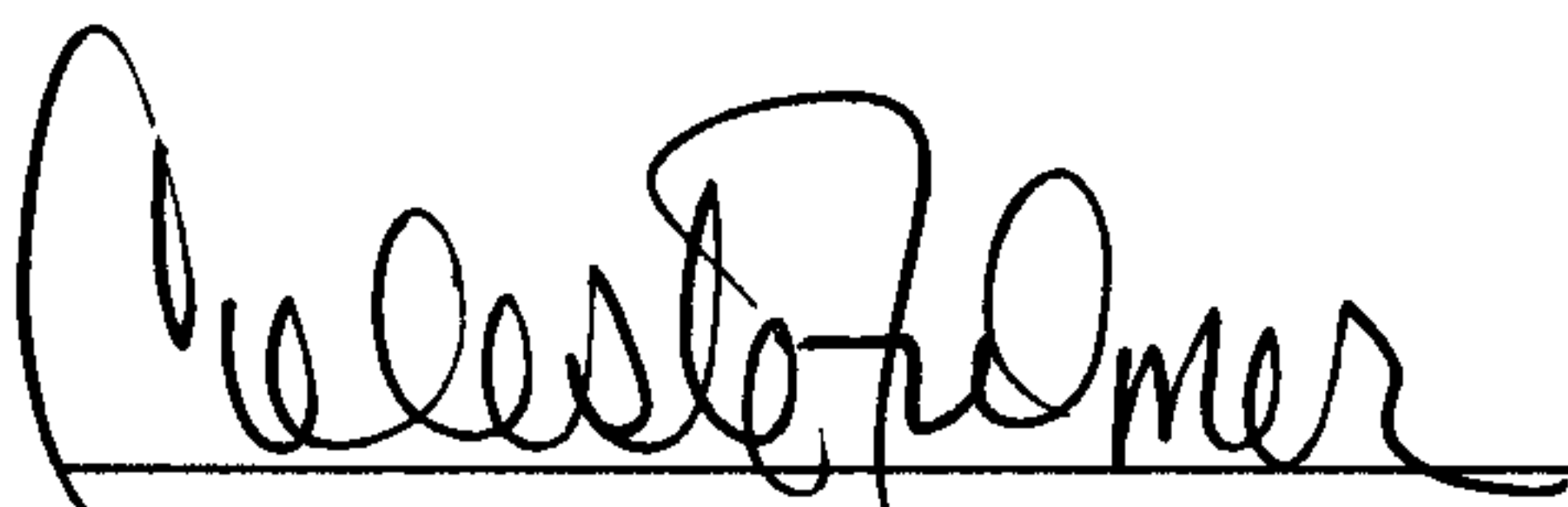

Notary public

Exhibit A

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CIRCUIT & DISTRICT
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IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

RANDALL H. GOGGANS,

Plaintiff,

vs.

**DEERWOOD LAKE LAND COMPANY,
INC., AN ALABAMA NON-PROFIT
CORPORATION**

Defendant

and

A., B., C., D. and E. individuals, entities and/or
mortgagees which may have ownership or
other interests in and about the roads and
common areas of Deerwood Subdivision,
Shelby County, Alabama, who may be parties in
interest to real property described in
this Complaint

Case Number: *CN06-1368*

COMPLAINT

Comes now, the Plaintiff in the above styled cause and for his complaint states as follows:

1. Plaintiff is a resident of Shelby County, Alabama, over the age of 19 and is the current owner of the following described property located in Shelby County, Alabama; to wit: the East 1/2 of the SE 1/4 of Section 13, Township 19, Range 1 East and the West 1/2 of the SW 1/4 of Section 18, Township 19, Range 2 East, Shelby County, Alabama (herein collectively referred to as Parcel I).

2. Defendant Deerwood Lake Land Company (Deerwood), a non-profit corporation located in Shelby County, Alabama, is the owner of all roadways and community property set

forth on Map of Deerwood set out in Map Book 6, Page 30 and Deerwood Lake 2nd Sector as set forth in Map Book 21, Page 57 together with access road connecting Deerwood Lake Subdivision to Old U.S. Highway 280 in Shelby County, Alabama as established by easement recorded in Deed Book 245, Page 10 and amended in Deed Book 290, Page 390 all in the Office of the Judge of Probate Shelby County, Alabama. Defendants A., B., C., D. and E are parties who may have an interest in the roadways described herein, who will be added to this action if and when such interests are ascertained.

3. Plaintiff avers that on the 21st day of July 1966, Johnson-Rast & Hayes Co., Legrand H. Amberson and James L. Fletcher, Jr. (hereinafter referred to as "Original Owners") were the owners of Parcel I and also the owners of the following described property located in Shelby County, Alabama; to wit: the east ½ of the SW ¼ of Section 18, Township 19, Range 2 East and the west ½ of the SE ¼ of Section 18 Township 19, Range 2 East, Shelby County, Alabama (collectively herein Parcel II). Accordingly, the Original Owners had unity of ownership in Parcels I and II.

4. Plaintiff avers that on July 21, 1966 the Original Owners obtained an easement from Hammermill Paper Company (hereinafter referred to as the "Hammermill Easement") accessing Parcels I and II to Old U.S. Highway 280 in Shelby County, Alabama. Said easement was subsequently amended in Deed Book 290, Page 390 Office of the Judge of Probate Shelby County, Alabama.

5. Plaintiff avers that Parcels I and II are contiguous. The Hammermill easement only touches Parcel II.

6. Plaintiff avers that on the 27th day of September 1966, by instrument recorded in Book 245, Page 15, Probate Office of Shelby County, Alabama, the Original Owners conveyed Parcel I to Herbert H. Thomas (hereinafter referred to as "Thomas") together with the Hammermill Easement. The Hammermill Easement does not touch Parcel I. In addition, on September 27, 1966, by instrument recorded in Book 245, Page 13, Probate Office of Shelby County, Alabama, Johnson-Rast & Hayes Co. and James L. Fletcher, Jr. conveyed their undivided interest in Parcel II to Legrand H. Amberson and Frances Y. Amberson (Amberson) and thereafter, Amberson owned 100% of the fee interest in Parcel II.

7. Plaintiff avers that on and after September 27, 1966 Thomas has continuously accessed Parcel I from Old U.S. Highway 280 in Shelby County, Alabama by use of the roadway existing on the Hammermill Easement and across an existing roadway on Parcel I as modified by Defendant Deerwood and its predecessor in title. On or about December 6, 1966 Amberson conveyed an easement to Thomas (hereinafter referred to as the "Amberson Easement") to access Parcel I from the Hammermill Easement across the roadway existing on Parcel II. Said easement was not recorded until March 22, 2006.

8. Plaintiff avers that since his acquisition of Parcel I, Thomas has used the Hammermill Easement and the roadway across Parcel II often and continuously for a period of 40 years. Said use has been open, visible, continuous and necessary in that the Hammermill Easement and

roadway across Parcel II as evidenced by the Amberson Easement was the only means of access to Parcel I.

9. Plaintiff avers that Defendant, Deerwood Land Lake Co., Inc. has installed a gate (the Gate) at or near the intersection of Old U.S. Highway 280 in Shelby County, Alabama and the south end of the Hammermill Easement and, in recognition of Thomas' rights to use the Hammermill Easement and the roads within Parcel II, allowed Thomas access through the Gate and accepted monetary contributions from Thomas for the maintenance of the road on the Hammermill Easement and the roads on Parcel II.

10. Plaintiff avers that the use of the road located on Parcel II was made by the Original Owners in order to access Parcel I and has existed since September 27, 1966.

11. Plaintiff avers that on March, 17 2006, Thomas Land Company, L.L.C., as successor in interest of Thomas in Parcel I, conveyed Parcel I to Plaintiff together with the Hammermill Easement and the Amberson Easement.

12. Plaintiff avers that since March 17 2006, defendant Deerwood Land Lake Co., Inc. has denied the Plaintiff access to Parcel I by refusal to allow Plaintiff to enter the Gate and traverse the roadway on the Hammermill Easement and the roadway accessing Parcel I and across Parcel II.

13. Plaintiff avers that he has a non-exclusive easement for ingress and egress on, over, under and across the Hammermill Easement by absolute grant and the roadways accessing Parcel I across Parcel II.

14. Plaintiff avers that the Hammermill Easement and the roadway crossing Parcel II accessing Parcel I is necessary for the access of Parcel I.

15. Plaintiff offers to do equity.

16. Attached hereto as Exhibit A is a visual depiction of Parcels I and II, The Amberson Easement and the Hammermill Easement.

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that the defendants be served with a Summons and Complaint issued in this cause and that the defendant Deerwood Lake Land Company, Inc. be required to plead or answer thereto within the time required by law or else suffer a default judgment entered against it.

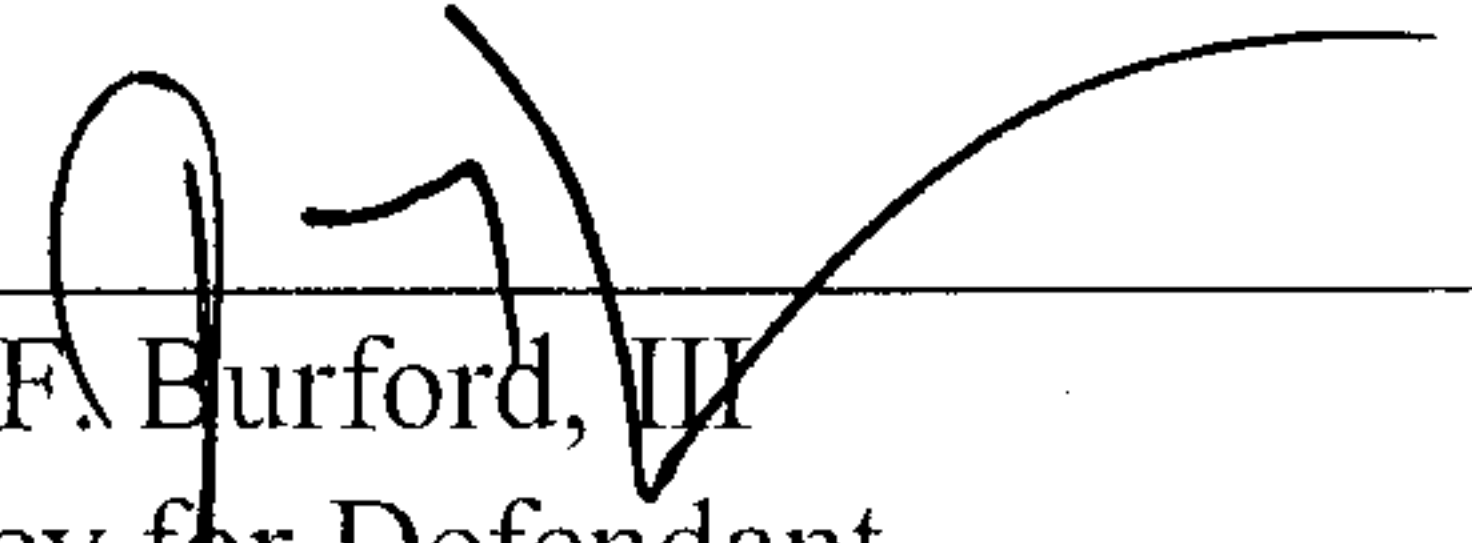
Plaintiff further requests that upon a hearing of this cause the court will hold and determine that the Plaintiff and his successors and assigns to Parcel I have a perpetual, non-exclusive easement, running with the land for ingress and egress to and from Parcel I by way of the Hammermill Easement and the roadway existing on Parcel II which accesses Parcel I.

Plaintiff further requests that upon a hearing of this cause the court will enter a

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preliminary and permanent injunction against defendant Deerwood Lake Land Company, Inc. enjoining and restraining it from precluding or interfering with Plaintiff's and/or his successors in interests to Parcel I use of the Gate, the Hammermill Easement and the roadways across Parcel II accessing Parcel I.

Plaintiff requests such several or other, further and different relief as to which he may be entitled in the premises.


James F. Burford, III
Attorney for Defendant
1318 Alford Avenue, Suite 101
Birmingham, Alabama 35226
Telephone: (205) 822-3433
Facsimile: (205) 822-1706

Randall H. Goggans
30 Boulder Ridge
Columbiana, AL 35051

Deerwood Lake Land Company
c/o Gerard John Durward, President
3525 Bermuda Drive
Birmingham, AL 35210

DEERWOOD

PARCEL II

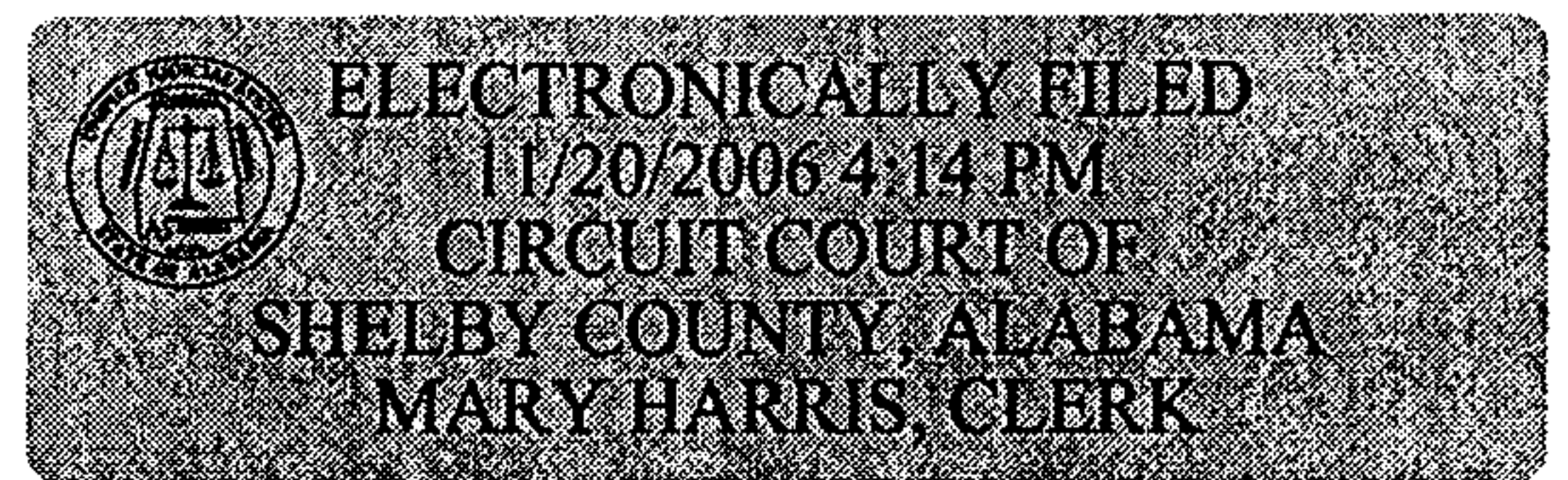
— AMBERSON ESTABLISHMENT

INMAGU3 EASEMENT



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Exhibit B



IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

RANDALL H. GOGGANS,

Plaintiff,

v.

DEERWOOD LAKE LAND
COMPANY, INC.,

Defendant.

CASE NO. CV-2006-1368



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ANSWER

Comes now defendant, Deerwood Lake Land Company, Inc., (the correct name of which is Deerwood Lake Land Company) and answers the complaint as follows:

1. Admits the allegations contained in paragraph 1 of the complaint, except that Plaintiff is not the current owner of a tract of land approximately $5\frac{1}{4}$ acres in area lying in the northeast corner of the W $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 18, Township 19 South, Range 2 East, Shelby County, Alabama.
2. Admits the allegations contained in paragraphs 2 through 6 of the complaint.
3. Admits that Thomas has used the Hammermill Easement, has crossed Defendant's property to access Parcel I, and that a document purporting to convey an easement from Amberson to Thomas dated December 6, 1966, was not recorded until March 22, 2006, as alleged in paragraph 7 of the complaint, but denies or is without sufficient knowledge either to admit or deny the remaining allegations in said paragraph.
4. Admits that Thomas has used the Hammermill Easement and has crossed Defendant's property to access Parcel I, as alleged in paragraph 8 of the complaint, but denies or is without sufficient knowledge either to admit or deny the remaining allegations in said paragraph.

5. Admits that Defendant has installed a gate, has allowed Thomas access through the gate, and has accepted payment from Thomas for road maintenance as alleged in paragraph 9 of the complaint, but denies the remaining allegations in said paragraph.

6. Are without sufficient knowledge either to admit or deny the allegations contained in paragraph 10 of the complaint.

7. Admits that Thomas Land Company, L.L.C. purported to convey the Amberson Easement to Plaintiff and admits the remaining allegations contained in paragraph 11 of the complaint.

8. Admits the allegations contained in paragraph 12 of the complaint.

9. Admits that Plaintiff has a grant of the Hammermill Easement but denies the remaining allegations contained in paragraph 13 of the complaint.

10. Denies the allegations contained in paragraph 14 of the complaint.


11. Defendant alleges that the Hammermill Easement and any other access or way across Defendant's property is not necessary to access Parcel I because Plaintiff owns other real estate adjacent to and contiguous with Parcel I to the west which directly fronts on Old U.S. Highway 280.

12. Defendant is a purchaser in good fath for a valuable consideration, without notice of the unrecorded document purporting to convey the Amberson Easement.

13. Defendant alleges that any use by Thomas of Defendant's property (Parcel II) for access or otherwise was by permission of Defendant and not adverse or by claim of right by Plaintiff.

s/ William R. Justice
William R. Justice (JUS001)
Attorney for Defendant

WALLACE, ELLIS, FOWLER & HEAD
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Columbiana, AL 35051
phone: (205) 669-6783
fax: (205) 669-4932
email: billjustice9@aol.com


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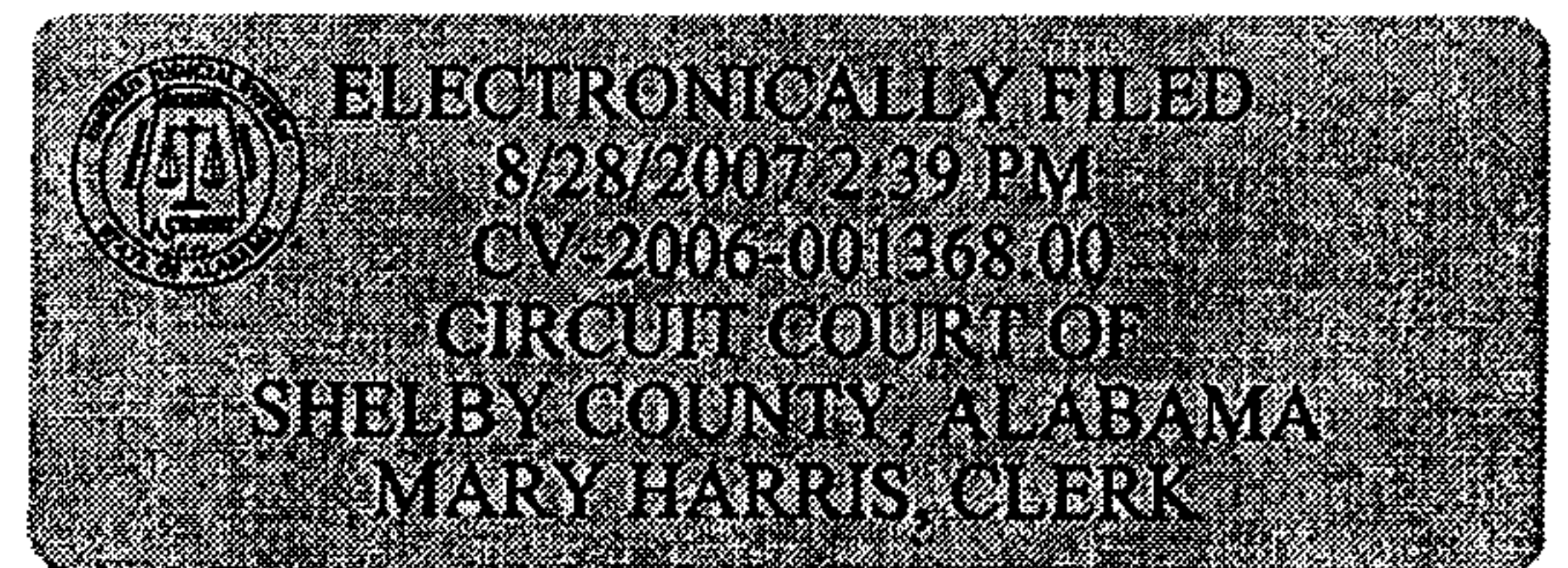
CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Answer on the attorneys for Plaintiff as follows, by efileing or by sending a copy of same by first class U.S. Mail, postage prepaid, on this 20th day of November, 2006:

James F. Burford, III
Robert D. Norman, Jr.
1318 Alford Avenue, Suite 101
Birmingham, AL 35226

s/ William R. Justice
William R. Justice

Exhibit C



IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

RANDALL H. GOGGANS,

*

Plaintiff

*

VS

*

CASE NO: CV-06-1368

DEERWOOD LAKE LAND COMPANY, *
INC.,

Defendant.

*



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ORDER

This matter came before the Court for trial on August 27, 2007 and at the close of Plaintiff's case on Motion of Defense for a Verdict for the Defendant as a matter of law, the same is GRANTED.

Cost taxed as paid.

DONE and ORDERED this the 28th day of August, 2007.

s/Dan Reeves

CIRCUIT JUDGE

● Exhibit D ●

STATE OF ALABAMA -- JUDICIAL DEPARTMENT
THE COURT OF CIVIL APPEALS
OCTOBER TERM, 2008-2009



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2070370

Brightwater Properties, LLC v. Deerwood Lake Land Company,
Inc.

Appeal from Shelby Circuit Court (CV-06-1368).

THOMAS, Judge.

AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(C), Ala. R. App. P.; Joseph v. MTS Inv. Corp., 964 So. 2d 642, 646 (Ala. 2006); Burkes Mech., Inc. v. Ft. James-Pennington, Inc., 908 So. 2d 905, 910 (Ala. 2004); Watson v. General Motors Acceptance Corp., 585 So. 2d 916, 918 (Ala. 1991); Helms v. Tullis, 398 So. 2d 253, 255 (Ala. 1981); Bruner v. Walker, 366 So. 2d 695, 698 (Ala. 1978); Butterworth v. Morgan, [Ms. 2070141, June 13, 2008] ____ So. 2d ____, ____ (Ala. Civ. App. 2008); and Bluff Owners Ass'n, Inc. v. Adams, 897 So. 2d 375, 378-79 (Ala. Civ. App. 2004).

This case was transferred to this court by the supreme court, pursuant to § 12-2-7(6), Ala. Code 1975.

Thompson, P.J., and Pittman, Bryan, and Moore, JJ.,
concur.