

REPORTER'S RECORD

TRIAL COURT CAUSE NO. 13-002483-CV-361

SAMUEL RAY HINES, ET AL)(IN THE DISTRICT COURT OF
VS.)(BRAZOS COUNTY, TEXAS
CURTIS CAPPS)(361ST JUDICIAL DISTRICT

MOTION TO COMPEL COUNSEL TO SHOW AUTHORITY

On the 28th day of March, 2017, the following proceedings came on to be heard outside the presence of a jury in the above-entitled and numbered cause before the Honorable Steve Smith, Judge presiding, held in Bryan, Brazos County, Texas:

Proceedings reported by Computerized Stenotype Machine; Reporter's Record produced by Computer-Assisted Transcription.

Wendy L. Kirby, CSR
Official Court Reporter
361st District Court

A P P E A R A N C E S

MR. JAY GOSS
Bruchez & Goss
SBOT No. 08222600
4343 Carter Creek Parkway, Suite 100
Bryan, Texas 77802-4455
979-268-4343 Phone

ATTORNEY FOR THE PLAINTIFFS

MR. TY CLEVANGER
Attorney at Law
SBOT No. 24034380
P.O. Box 20753
Brooklyn, New York 11202
979-985-5289 Phone

MR. BILL YOUNGKIN
Youngkin & Doss, PLLC
SBOT No. 22226500
P.O. Box 4806
Bryan, Texas 77805
979-776-1325 Phone

ATTORNEYS FOR THE DEFENDANT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHRONOLOGICAL INDEX

<u>MARCH 28, 2017</u>			<u>PAGE</u>	<u>VOL.</u>
PROCEEDINGS			6	1
<u>PLAINTIFF'S WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>VOIR DIRE</u>	<u>VOL.</u>
DEBORAH CRAWFORD	15 27	22 30		1 1
SAMUAEL RAY HINES	31			1
NETTIE MAE CLAY	32	33		1
<u>DEFENDANT'S WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>VOIR DIRE</u>	<u>VOL.</u>
JAY GOSS	37			1
PROCEEDINGS ADJOURNED			57	1
COURT REPORTER'S CERTIFICATE			58	1
COURT REPORTER'S EXHIBIT CERTIFICATE			59	1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ALPHABETICAL INDEX

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>VOIR DIRE</u>	<u>VOL.</u>
CLAY, NETTIE MAE	32	33		1
CRAWFORD, DEBORAH	15 27	22 30		1 1
GOSS, JAY	37			1
HINES, SAMUEL RAY	31			1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>ADMITTED</u>	<u>VOL.</u>
1	Various Authorizations	8		1
2	2016 WL 279022 Capps vs. Foster	15		1
3	Authorization from Nettie Mae Clay	33 36	36	1
F-1	Email	31	31	1
F-2	Email	31	31	1
F-3	Email	31	31	1
F-4	Email	31		1

Wendy L. Kirby, CSR
Official Court Reporter
361st District Court

P R O C E E D I N G S

(Open court, parties present)

THE COURT: We are here in Cause No. 13-002483 for the sole and singular purpose of conducting a hearing on the motion to compel Counsel to show authority.

Mr. Goss, I believe it is your turn in the barrel.

MR. GOSS: Yes, it is, Judge. Thank you. We provided you a response. Do you have it?

THE COURT: (Indicating).

MR. GOSS: So you can follow along with me. Did you get these turned on?

THE COURT: I turned them on. For some reason, it says it's not turned on. Let me try it again. There it goes and let me --

(Brief interruption)

MR. GOSS: Judge, this is a motion to show authority on this case, which is a bill of review case which is ancillary to the judgment that was taken in 2010. I put just a portion of the judgment up there to show the Court that the judgment in the 2010 case actually states in that paragraph, additionally, the undivided interest held by defendant's heirs in the remainder of the 285.5 acres is divested from the defendant's and the same is vested in the plaintiffs, Buetta and Rejena Scott.

So what we're talking about in the judgment is the

1 entire 285 acres or 285.5 acres. It was -- there was a remnant
2 one and two in the upper paragraph that was also divested to and
3 given to Buetta and Rejena Scott, which was part of the 285.5;
4 hence, it says, the remainder of the 285.5. And so this case
5 involves a judgment that purports to divest all the defendants of
6 the 285.5 acres. At least that's what it says on the face.

7 We have -- there are three other ancillary cases.
8 There is a -- there was a case with the Foster heirs that was in
9 the 272nd, a case that involved a portion of the 285 acres, and
10 you'll see that part of those defendants are plaintiffs in this
11 case as well. But that's a part of the 285.

12 There's also a partition case in the 45 acres that
13 is in the -- it's part of the 285 and there's this case that is
14 the entire 285. If the Judge would look at Chart J in the
15 response that we had, we set out --

16 THE COURT: Have you given a copy to Mr. Youngkin?

17 MR. GOSS: They have a copy, yes, sir. They got a
18 copy when you got a copy.

19 It sets out the 65 named plaintiffs that we
20 represent and there's also -- on the third page of Exhibit J
21 there's three unnamed petitioners that we also represent, but
22 there's various ways that we have represented them. I'm going
23 to -- as I go down the line, I will also show you. We offer --
24 it says State's Exhibit, but offer Exhibit 1. This is a group of
25 authorizations that Mr. Hoppess and I received after we got the

1 motion to compel. And I'll identify kind of which ones there are
2 related to that.

3 (Exhibit 1 offered)

4 MR. GOSS: Samuel Hines there, number one, he is
5 here. He is the main plaintiff. He'll testify today about the
6 fact that he hired us to represent him, but he also was -- as you
7 can see had deposition notices that had -- if I can go through --
8 if I could direct your attention to Exhibit J --

9 THE COURT: Well, let me first ask you -- you said
10 Samuel Hines. The first page of this says Robert Hines.

11 MR. GOSS: Let me -- on Exhibit J.

12 THE COURT: I thought we were still talking about
13 this one. And I've renamed it 3/28/17 Exhibit 1.

14 MR. GOSS: Thank you.

15 THE COURT: I've got Mr. Hines right here.

16 MR. GOSS: Okay. Spreadsheet J shows the various
17 ways that we indicate that we represent each one of those. And
18 if you'll see the exhibits up there, Exhibit C, which is a
19 deposition notice, that's all cross-referenced to Exhibit C that
20 you have where in this particular case Samuel Hines was noticed
21 for deposition in one of the ancillary cases.

22 Clearly Mr. Youngkin noted that we represented him.
23 We produced him for deposition and so I don't know that there's
24 any question about that. We're going to go through each one of
25 these as we travel through here. Mr. Hines is here to testify

1 about all of that, but I'm just going to identify each of these
2 pieces of evidence.

3 The Exhibit D is a power of attorney that
4 Mr. Rodgers got. And the Court will remember that all of these
5 cases came to Mr. Hoppess and I through Mr. Rodgers. He was the
6 original attorney. He, of course, had a terrible semi-job change
7 where he had to go to England and so he asked Karl and I to take
8 those over so we did. That's why you will see we substituted in
9 in each one of these cases and so we have a power of attorney
10 from Mr. Hines for Mr. Rodgers on the 2012 case, which is the
11 Foster case and the 2010 case which is there, and they're all
12 clearly identified.

13 In addition, in the bill of review case Mr. Hines
14 signed an affidavit. For the first amended petition he signs an
15 affidavit. He also is on an email, which was emailed to us,
16 which we have identified as Exhibit F for all of the people that
17 were emailed that asked Mr. Hoppess to represent them. That
18 email came from Deborah Harris Crawford. She is here and she
19 will testify that she talked to all these people and sent these
20 emails out.

21 Exhibit G is the partition suit. They are -- these
22 people that are in that column are identified in the partition
23 suit and provide a statement of interest that they own the
24 property - not Mr. Capps - in that statement of interest. They
25 are defendants of record in the Foster case, which is Exhibit H

1 and Exhibit I. Each one of those are identified over there.

2 The next one -- and so I'm going to go through each
3 one of these so that we can show authority on each of these and
4 so that we can say, you know, look, this is how we have authority
5 to represent or to really bring the case. That's what -- I
6 believe Rule 12 says, do you have authority to prosecute the
7 case, not, do you have authority to represent every single
8 person. And we've got a case that says you don't have to have
9 authority to represent every single person, just to prosecute the
10 case. We're going to go through here and show how we have
11 authority to do that.

12 Robert Hines has an authorization there that you
13 have in Exhibit 1. It is -- he also was noticed for deposition
14 by Karl Hoppess and I. Karl Hoppess, we presented him for
15 deposition in the 2014 case. That's the partition case. He
16 signed an affidavit in this particular case in the first amended.
17 He is identified in an email for us to represent December 17,
18 2014, and he was a defendant in the Foster case giving him a
19 portion of this 285 acres.

20 Virginia Harris also signed an authorization, also
21 has -- also had a deposition notice, also has a power of attorney
22 from Mr. Rodgers, which is in our response, has an affidavit as
23 identified in an email and was a defendant in the Foster case.
24 Virginia Hines Harris has an authorization that is set forth in
25 Exhibit 1, has signed an affidavit with Mr. Rodgers, was

1 presented by deposition -- for deposition by Mr. Hoppess and I in
2 a companion case, signed an affidavit in the first amended
3 petition in this case, has what we identified in an email that we
4 should represent her in December.

5 And Laretta Hines is exactly the same way,
6 although we don't have a power of attorney from Mr. Rodgers, but
7 she has provided us with an authorization, as have all the
8 others.

9 Bonita Thompson has an authorization there in
10 Exhibit 1. We have a depo notice where we presented her for
11 deposition. There was an affidavit and she was identified in the
12 email list.

13 Vanessa Richardson Pena, we have an authorization
14 there from her in Exhibit 1. We presented her for deposition in
15 a companion case where Mr. Youngkin clearly identified her as our
16 client. He sent the notice to us. We contacted her. We got her
17 to Mr. Youngkin's office and presented her for deposition. She
18 also signed a power of attorney with Mr. Rodgers, had an
19 affidavit. We've got an email, and she was a defendant in the
20 Foster case.

21 Charlotte Conners, we have -- we also have an
22 authorization from her, we presented her for deposition in a
23 companion case requested by Mr. Rodgers [sic]. She signed an
24 affidavit -- I'm sorry, by Mr. Youngkin. She signed an affidavit
25 with Mr. Rodgers.

1 Roberta Harris, we do not have an authorization for
2 her, but we presented her for deposition. She was our client in
3 that case and we -- she has signed an affidavit. She signed a
4 power of attorney with Mr. Rodgers asking him to prosecute both
5 the Foster case and the 2010 case. And she has an affidavit and
6 she was a defendant in the Foster case.

7 THE COURT: Let me just stop you for a moment. And
8 I'm not telling you what to do, but do you intend to go through
9 all 65 because we're going to be here a long time.

10 MR. GOSS: Judge, I'm happy to summarize this, but
11 it's our burden to show each one of these and so -- each of these
12 are the same. I can group them and we can put on the testimony,
13 but I wanted you to be able to kind of flow through how we did J
14 so then you can see where those are. So we have from one --

15 THE COURT: I can easily look at the spreadsheet
16 and see where you're claiming the right to represent these
17 people.

18 MR. GOSS: Okay.

19 THE COURT: And I would suggest that perhaps we
20 mark J as an exhibit for the hearing, or is it --

21 MR. GOSS: It's part of the response.

22 THE COURT: Part of your response. Then I'll take
23 judicial notice of it.

24 MR. GOSS: Then let me just say that -- let me
25 break it up into categories since I think I've got the Court on

1 the track of how we did the spreadsheet. We've got basically
2 from one down to -- well, from one to eleven we've got
3 authorizations either from us or from Mr. Rodgers or both. We've
4 got authorizations from 16 down to 26 from Mr. Rodgers. We also
5 have authorizations on 19 Jackie Johnson, Linda Johnson, Norene
6 Johnson, and Grechal Johnson, all a part of Exhibit 1 as well.

7 Each of those in the first page that we don't have
8 authorization on, for instance -- and Mr. Clevenger brought this
9 up in his response to our response. Ms. Hollis, Kelvin Godine,
10 Marice Ann Godine, Mary Catherine Myers-Shine, and Marcellus
11 Shirley were all noticed for deposition by Mr. Youngkin through
12 us stating that we were the counsel of record and their attorney.
13 They were either unavailable on the date that he wanted to take
14 their deposition or for some other reason. They were all
15 contacted by us. They were prepared to give a deposition. He
16 just -- he took the depositions of the ones that he had and then
17 he never got back to them, but we were prepared to take the
18 deposition -- I mean, to present.

19 THE COURT: Well, as to 12 through 14, aren't you
20 claiming email authorization?

21 MR. GOSS: I am claiming email authorization on
22 those as well. So that takes us to -- and then on the back page,
23 28 through 44 with the exception of, I believe, Lannette Solomon
24 and Lawrence James, who I do not have email authorization for,
25 and Marion Godine, which I do not have email authorization for, I

1 have authorization all the way down to 44. Then I have
2 authorization for Mary Steptoe, which is in Exhibit 1, and in 46,
3 Mr. Hines.

4 So let me just be clear, Judge. The authorizations
5 that I just had as Exhibit 1 are not part of this chart. So you
6 have to take this chart and look for the authorization as well.

7 THE COURT: I understand.

8 MR. GOSS: So that leaves -- that leaves from 47
9 Bernadine McKenzie down through 65 Ronald Richardson, all of whom
10 are defendants in the Foster case.

11 THE COURT: Counsel, I don't see where No. 64 and
12 65 are shown as defendants in the Foster case.

13 MR. GOSS: You're right, Judge, and I apologize.
14 And I don't know about that. So 64 and 65, frankly I'm not sure.

15 THE COURT: Okay.

16 MR. GOSS: But they're --

17 THE COURT: And is it fair to say that I'm not
18 seeing any authorization for 36, 38, and 39? At least there's
19 nothing on the spreadsheet that has anything in there.

20 MR. GOSS: Yes. Let me just offer Exhibit 2. That
21 is simply the opinion of the court of appeals which shows the
22 court of appeals that Karl Hoppess and Jay Goss are a part of the
23 attorneys that represent the known and unknown heirs of Priscilla
24 Foster. So with regard to all of those defendants that are in
25 the Foster suit, which is an 86-or-so-acre tract within this

1 285.5-acre tract, then we had been representing them, Courts
2 recognize that we represented them. I think that is Exhibit A to
3 our response. I'm sorry. That's not Exhibit A. That's part of
4 Exhibit A to our response to show that we are representing those
5 individuals and those persons. And so that's what we have in the
6 response.

7 (Exhibit 2 offered)

8 MR. GOSS: At the present time -- I mean, one of
9 the things the affidavit was -- that was filed to ask us to show
10 cause was related to Nettie Clay. And on that I would just go
11 ahead and -- well, I'll tell you what. Let me ask Deborah to
12 come up and --

13 THE COURT: Right up here, please, ma'am. Please
14 raise your right hand, ma'am.

15 (Witness sworn)

16 THE COURT: If you will, please state your name for
17 the record and spell it for the court reporter.

18 THE WITNESS: Deborah, D-e-b-o-r-a-h, last name is
19 Crawford, C-r-a-w-f-o-r-d.

20 DEBORAH CRAWFORD,

21 having been first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. GOSS:

24 Q. Deborah, are you kin to one of the ancestors that own
25 this 285.5-acre tract?

1 A. Yes.

2 Q. Who are you kin to?

3 A. Quite a few, starting with my mother.

4 Q. Let me ask about Alex Scott, Wyatt Butler?

5 A. Starting with Alex Scott and Priscilla Foster.

6 Q. So you're related to Alex Scott and Priscilla Foster?

7 A. Correct.

8 Q. Have you been in contact with other family members about
9 this particular -- these particular lawsuits?

10 A. Yes.

11 Q. And have you been in contact with Karl Hoppess to
12 request that he represent various people on these lawsuits?

13 A. Yes.

14 Q. I'm going to hand you what's marked as Exhibit F-1.

15 MR. GOSS: Judge, this is really Exhibit F,
16 corresponds to our Exhibit F there.

17 THE COURT: All right.

18 Q. (By Mr. Goss) I'll ask you if that first page is an
19 email that you sent to Mr. Hoppess?

20 A. Yes.

21 Q. And was your name Deborah Harris at that time?

22 A. Yes.

23 Q. And what were you telling him in this email?

24 A. Basically to summarize it that we were in agreement, the
25 family, to hire him as counsel.

1 Q. And is that to represent you-all on all the 285 acres?

2 A. Correct.

3 Q. On all the suits related to the 285 acres?

4 A. Correct.

5 Q. And you attach in -- on the next page you attach a list
6 of persons that you are asking him to represent?

7 A. Correct.

8 Q. And would you - just for the record - just go ahead and
9 read off the names of those persons?

10 A. For which page?

11 Q. Page 2 -- I believe it's Page 2 through 4, starting with
12 Virginia Harris.

13 A. Just the names?

14 Q. Just the names.

15 A. Virginia Harris, Phillip W. Johnson, Charlotte Conners,
16 Mary Shine, Janice Farley, Robert Hines, myself Deborah Harris,
17 Hollis Godine, Rockell Jiles, Ronald Kelly, Vanessa Richardson
18 Pena, Vickie Johnson-Cole, Bonita Thompson, Lauretta N. Hines,
19 Marion Godine, Maurice Godine, Stanley Godine, Karl Godine,
20 Charmaine Traylor, Billy G. Hines, Jr., Samuel Ray Hines.

21 Q. And that's not all the people that were in the Foster
22 lawsuit, were they?

23 A. No, sir.

24 Q. Is that just the people that you talked to that wanted
25 Mr. Hoppess to represent them?

1 A. These were the people that previously had not been
2 contacted that had some contact with me and said yes.

3 Q. And then let me ask you to look at F-2, which is the
4 next page. Is that an email that you sent to Mr. Hoppess?

5 A. Yes.

6 Q. And I guess that was -- it was a forward of an email
7 to -- from Marion Godine, correct?

8 A. Correct.

9 Q. And so in that Marion Godine is asking you to ask
10 Mr. Hoppess about the fact that he should be receiving
11 correspondence for these people, not themselves?

12 A. Correct.

13 Q. And did you email this to Mr. Hoppess?

14 A. Yes.

15 Q. What was the purpose of the email?

16 A. To add on additional names of family members.

17 Q. For Mr. Hoppess to represent?

18 A. Correct.

19 Q. And on March 3, which is Exhibit F-3, is that also an
20 email from you to Mr. Hoppess?

21 A. Correct.

22 Q. And that is -- what are you asking Mr. Hoppess in that
23 email or telling him?

24 A. That there were some additional family members who were
25 not previously listed that would like for him to be their clients

1 [sic] and to please add them.

2 Q. And that is Dr. Marion Godine?

3 MR. CLEVINGER: Your Honor, I'm going to have to
4 object on hearsay grounds because we're going into a list that
5 was not even sent directly to Ms. Crawford. We've got a list
6 that supposedly was sent to Ms. Godine, who then forwarded it to
7 Ms. Harris, and then to Mr. Hoppess. We have multiple layers of
8 hearsay.

9 MR. GOSS: Your Honor, it makes no difference. All
10 we're here on is do we have some authority to represent these
11 people. There are legions of cases, although I can't pull one up
12 now, that family members are point people to represent or to go
13 between a lawyer and a client. And so we're not necessary --
14 that's what my --

15 MR. CLEVINGER: Your Honor, if I may respond. He
16 cannot pull up one case because there is not one case for that
17 proposition, not one.

18 THE COURT: Is there case law that requires a
19 timely objection?

20 MR. CLEVINGER: I'm not aware of one, but I'm
21 talking about her testimony right now. This is the first I've
22 heard this testimony.

23 THE COURT: Well, you also referenced an email
24 from -- to her, which I heard testimony about. There was no
25 objection made. I think that objection was not timely. That

1 hearsay objection is overruled. What additional hearsay
2 objection do you have?

3 MR. CLEVINGER: Well, I don't think we waived
4 anything on this email.

5 THE COURT: Counsel, we've already -- I've already
6 made my ruling on that.

7 MR. CLEVINGER: Your Honor, I'm not trying to be
8 argumentative. I'm trying --

9 THE COURT: Then that's fine. I've made my ruling
10 as to that email.

11 MR. CLEVINGER: I understand that.

12 THE COURT: It's not timely. Do you have any
13 additional to --

14 MR. CLEVINGER: There is a second email from
15 Ms. Godine that I made a timely objection to.

16 THE COURT: If you will appropriately tone your
17 voice, that objection will be sustained. You may be seated.

18 MR. CLEVINGER: Your Honor, I believe your personal
19 bias is showing.

20 THE COURT: That objection will be sustained. You
21 may be seated, Mr. Clevenger.

22 MR. CLEVINGER: Your Honor, if you cannot get past
23 your personal bias, I'm going to have to ask you to recuse.

24 THE COURT: Counsel, I'm not going to recuse myself
25 on personal bias because there is none. I'm simply saying please

1 use an appropriate tone of voice. And I think I've shown that I
2 can be fair because I just sustained your objection.

3 MR. CLEVINGER: Thank you.

4 THE COURT: Go ahead, Mr. Goss.

5 Q. (By Mr. Goss) In F-3 -- if you will, take a look at
6 F-3.

7 MR. CLEVINGER: I've already objected, Your Honor.

8 THE COURT: F-3 is her email to Mr. Hoppess, am I
9 correct?

10 MR. GOSS: Correct.

11 THE COURT: You objected to F-4, which is --

12 MR. CLEVINGER: You're correct. I apologize.

13 THE COURT: Go ahead.

14 Q. (By Mr. Goss) That is an email directly from you to
15 Mr. Hoppess, correct?

16 A. F-3?

17 Q. Yes.

18 A. Correct.

19 Q. And F-2 is an email that you sent from you to
20 Mr. Hoppess?

21 A. F-2?

22 Q. Yes.

23 A. Yes.

24 Q. And it included an email from Ms. Godine to you?

25 A. Correct.

1 Q. Is that a mister or ms.? Marion?

2 A. It's she.

3 Q. From Ms. Godine to you, but you provided this to

4 Mr. Hoppess in terms of an email directly from you to

5 Mr. Hoppess?

6 A. Say again?

7 Q. You sent this email directly from you to Mr. Hoppess?

8 A. Yes.

9 Q. And F-4 is an email that you sent directly from you to

10 Mr. Hoppess, correct?

11 A. Correct.

12 Q. And you got that from Ms. Godine?

13 A. Correct.

14 MR. GOSS: Pass the witness.

15 THE COURT: Cross-examination?

16 MR. CLEVINGER: Yes, Your Honor.

17 **CROSS-EXAMINATION**

18 **BY MR. CLEVINGER:**

19 Q. Ms. Crawford, is your mother still alive?

20 A. Yes.

21 Q. Has she deeded to you any of the property that's in
22 dispute in this case?

23 A. Say that one more time.

24 Q. Has she deeded to you any of the property that's at
25 dispute in this case?

1 A. No, sir.

2 Q. So why are you a party supposedly in this case?

3 A. Why?

4 Q. Right. If you have no interest in the real estate, on
5 what basis are you claiming to be a party in this case?

6 A. Because I've been representing my mom on her behalf.

7 Q. And where is the power of attorney for that?

8 A. I have one.

9 Q. Where is it?

10 A. In my possession and a copy was given to Attorney
11 Rogers.

12 Q. Is it in the record here?

13 A. Oh, I don't know what's in the record. I'm sorry.

14 Q. Let me ask you this: Are you claiming the authority --
15 let's assume for a second you do have this power of attorney.
16 Are you claiming to represent other people besides your mother?

17 A. As power of attorney?

18 Q. That you don't have a power of attorney for. Is there
19 anyone else that you don't have a power of attorney for that
20 you're claiming to represent?

21 A. Not claiming to represent, but handle business, yes. I
22 don't know if that's considered power of attorney or not.

23 Q. Now, you've listed a number of people and some of them
24 even have addresses in here. Do you have emails directly from
25 some of these people authorizing you to act on their behalf or

1 authorizing Mr. Goss or anybody else to act on their behalf?

2 A. Emails from family members regarding all of this?

3 Q. Yes.

4 A. Yes, sir.

5 Q. You do? Why have those not been produced?

6 A. I wasn't told that I needed to send them since Attorney
7 Hoppess, Attorney Rodgers, and now Attorney Goss has been
8 handling all of that.

9 Q. But if we issue a subpoena you're willing to produce
10 these emails?

11 A. I can if need be. I think I still have some of them.

12 Q. Do you have a power of attorney from Nettie Clay?

13 A. My aunt, no, sir.

14 Q. Did you speak with each and every one of these people
15 that you have listed here as parties who need to be added?

16 A. On which sheet?

17 Q. Well, on any of these lists -- not F-4. We're not
18 talking about it, but on any of these other lists did you
19 directly communicate with any of these people?

20 A. Which lists?

21 Q. Let's start with F-1. Is there anybody on this list --
22 I'll make it easier. Is there anybody on this list that you did
23 not directly communicate with?

24 A. Yes.

25 Q. Who are the people that you did not communicate with?

1 A. On F-1 I did not directly communicate with Mary Shine.

2 Q. Is there anybody else?

3 A. I did not directly communicate with -- I haven't
4 directly spoken with Rockell.

5 Q. What about Hollis Godine, have you spoken with him?

6 A. I haven't spoken with him directly. I've only dealt
7 with him through his siblings.

8 Q. Let me go through the list, then, because you skipped
9 him.

10 A. Well, I've spoken with Charlotte, I've spoken with
11 Virginia, I've spoken with Phillip.

12 Q. Let me just -- let me limit you. I want to go through
13 each and every name here, and I want to know who you personally
14 have not spoken -- not their relatives, not their --

15 A. My apologies.

16 Q. -- that you personally spoke with.

17 A. Hollis no, directly, no.

18 THE COURT: Folks, one at a time please.

19 THE WITNESS: Oh, I'm sorry.

20 THE COURT: Let him finish the question and let me
21 finish my statement before you say, oh, I'm sorry, please. She
22 has to take down everything that's said in the courtroom and she
23 can't take down two people talking at the same time.

24 THE WITNESS: Yes, sir.

25 THE COURT: Thank you. Go ahead.

1 Q. (By Mr. Clevenger) Are there any people here on the
2 list that you have not directly and personally communicated with?

3 A. Going back to the top repeating, Mary Shine again,
4 Janice Farley, Hollis Godine, Karl Godine, Rockell Jiles.

5 Q. Any others?

6 A. For F-1, that's it.

7 Q. What about F-2? Are there any new names on F-2 that you
8 have not personally communicated with?

9 A. Stanley James Godine, Mary Catherine Myers-Anderson,
10 Annette Elaine Solomon-Strong, Curtis Raythiel Solomon, Lannette
11 Aileen Solomon, Linda Joyce Scott, Lawrence Al James, Lee
12 Adolphus Jackson, Wanda Goss, and Antoinette Preston.

13 Q. So you have no personal knowledge about whether these
14 people want to be represented by Mr. Goss and Mr. Hoppess; is
15 that correct?

16 A. I have the email with the request.

17 Q. I'm sorry. Are you talking about this email or a
18 different e-mail? Let me back up and restate my question. You
19 have said that you had no direct communications with some of
20 these people here; is that correct?

21 A. Correct.

22 Q. If you've had no direct communications with these
23 people, how do you personally know - personally, not based on
24 what somebody else told you - how do you personally know they
25 want to be represented by Mr. Goss or Mr. Hoppess?

1 A. I have no personal knowledge other than the email.

2 Q. Thank you. Now, you testified earlier with respect to
3 F-2 that this email from -- am I pronouncing that correctly,
4 Godine?

5 A. Godine.

6 Q. Thank you. This email from Godine you said or testified
7 was asking for these people to be added to the list; is that
8 correct? Is that what you testified to?

9 A. That was my understanding, yes.

10 Q. Could you look at this closely and tell me where it says
11 that?

12 A. My assumption was based on the last sentence when she
13 said, I'm still receiving mail from the courts and Youngkin and I
14 thought it should be going to Attorney Hoppess.

15 Q. But you would agree with me that there's nothing in here
16 that says these people want to be represented by Mr. Goss or by
17 Mr. Hoppess?

18 A. Correct.

19 MR. CLEVENGER: I have nothing further, Your Honor.

20 **REDIRECT EXAMINATION**

21 **BY MR. GOSS:**

22 Q. Ms. Crawford, Ms. Godine is asking you in the first
23 sentence, please check with attorney --

24 MR. CLEVENGER: Objection to leading, Your Honor.

25 THE COURT: Overruled.

1 Q. (By Mr. Goss) Please check with Attorney Hoppess to see
2 if my name and some other heirs are on the list as being
3 represented. Would you say that that is a request that she wants
4 to be represented?

5 MR. CLEVENGER: Objection; requests the opinion of
6 somebody's mindset who is not here to testify.

7 MR. GOSS: Your Honor, this is cross-examination
8 from the standpoint where he asked, we're on this "could it be
9 inferred" --

10 THE COURT: Let me have a chance to rule before you
11 start. Objection overruled. If I need some information from you
12 to make my rulings I'll ask either of you. Okay?

13 MR. GOSS: I'll try, Judge. Thank you.

14 Q. (By Mr. Goss) Would you take that as meaning that she
15 wants Mr. Hoppess to represent these people?

16 MR. CLEVENGER: Same objection. Your Honor.

17 THE COURT: Objection overruled. You may answer
18 the question, ma'am.

19 A. Yes, that was my assumption.

20 Q. (By Mr. Goss) And how did -- go back to F-1 with regard
21 to Ms. Shine. Why did you put her on the list? You said you
22 didn't talk to her directly. Who did you talk to?

23 A. Again, it was a collection of emails with other family
24 members who were dealing with clusters of groups of family
25 members and that's how her name came up.

1 Q. Did you talk to -- do you know who in her family that
2 you would have talked to?

3 A. If I'm not mistaken it goes way back. So I don't want
4 to speculate and guess. I can't remember.

5 Q. What about Janice Farley?

6 A. Ms. Farley was in a group with Mary Steptoe, Norene
7 Johnson, that group.

8 Q. And did you -- was that an email that you got from
9 somebody, that is the reason you put her on the list, or did you
10 talk to some of her relatives?

11 A. She was added based on some of the relatives.

12 Q. Hollis Godine, you said you didn't talk to him. Did you
13 talk to any of his family members?

14 A. Marion Godine, based on her request.

15 Q. So is Marion Godine related to Hollis Godine?

16 A. Yes.

17 Q. How -- I mean, is it brother, sister?

18 A. It's somewhere close. I can't remember if it's a
19 brother or if it's nephew or first cousin. The family is really
20 big. I apologize.

21 Q. Rockell Jiles, did you talk to anybody in his family?

22 A. That's a she and that's Marion's niece, I believe.

23 Q. And so that's why you put her on this list?

24 A. Based on Marion's recommendation.

25 Q. And Karl Godine?

1 A. Same reason, Marion's recommendation, family member. I
2 believe a nephew if I'm not mistaken.

3 Q. Was there anybody on this list that you just looked and
4 said, well, they ought to be on the list, but I hadn't talked to
5 anybody to tell them to put me on the list?

6 A. No, sir.

7 Q. Everybody that's on the list would have been somebody
8 that you got the impression wanted to be on the list?

9 MR. CLEVENGER: Objection; leading.

10 THE COURT: Sustained. Rephrase the question.

11 Q. (By Mr. Goss) Why did you put anybody on this list?

12 A. If they contacted me saying, I'm an heir or I'm a family
13 member, I want to be represented, please put me on the list.

14 MR. GOSS: Pass the witness.

15 **REXCROSS-EXAMINATION**

16 **BY MR. CLEVENGER:**

17 Q. Just to reiterate, Ms. Crawford, you testified, if I'm
18 correct, some of this is hearsay. You don't have direct personal
19 knowledge about whether some of these people want to be
20 represented by Mr. Goss or Mr. Hoppess? Let me clarify. You
21 have no direct personal knowledge about whether some of these
22 people want to be represented by Mr. Goss or Mr. Hoppess; is that
23 correct?

24 A. If it means, did I face-to-face have a conversation with
25 some people to know what they wanted, that would be correct.

1 There were some I did not have face-to-face or telephone
2 communications to know.

3 MR. CLEVENGER: Thank you. I have nothing further,
4 Your Honor.

5 THE COURT: You may step down, ma'am. Thank you.

6 MR. GOSS: If I haven't, I'd ask that those be
7 admitted.

8 THE COURT: F-1 through F-3 will be admitted. F-4
9 will be made a part of the record.

10 (Exhibits F-1 through F-3 offered & admitted)

11 (Exhibit F-4 offered)

12 MR. GOSS: We call Samuel Hines.

13 THE COURT: Please raise your right hand, sir.

14 (Witness sworn)

15 THE COURT: Have a seat, if you will, please, sir.
16 If you will, please state your name for the record and spell it
17 for the court reporter.

18 THE WITNESS: My name is Samuel Ray Hines. Samuel,
19 S-a-m-u-e-l, Ray, R-a-y, Hines, H-i-n-e-s.

20 THE COURT: Thank you.

21 SAMUEL RAY HINES,

22 having been first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. GOSS:

25 Q. Samuel, you are the named plaintiff in this Cause No.

1 13-002483-CV-361, aren't you?

2 A. Yes, sir.

3 Q. Did you authorize Karl Hoppess and Jay Goss to represent
4 you in this case and bring this bill of review on your behalf?

5 A. Yes, I did.

6 MR. GOSS: Pass the witness.

7 MR. CLEVENGER: I have nothing, Your Honor.

8 THE COURT: You may step down, sir. Thank you.

9 MR. GOSS: We would call Nettie Clay.

10 THE COURT: Please raise your right hand, ma'am.

11 (Witness sworn)

12 THE COURT: Have a seat, please, ma'am. Please
13 state your name for the record and spell it for the court
14 reporter.

15 THE WITNESS: My name is Nettie M. Clay. Nettie,
16 N-e-t-t-i-e, M-a-e, C-l-a-y.

17 THE COURT: Thank you.

18 NETTIE MAE CLAY,
19 having been first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. GOSS:

22 Q. Ms. Clay, I'm going to hand you what I've marked as
23 Exhibit 3 and ask if that's your signature on that?

24 A. It is.

25 Q. And that is an authorization for Mr. Karl Hoppess and

1 Mr. Jay Goss to act as your attorney in this particular case?

2 A. Yes.

3 MR. GOSS: I offer Exhibit 3.

4 (Exhibit 3 offered)

5 THE COURT: Has --

6 MR. GOSS: I gave him a copy. Pass the witness.

7 CROSS-EXAMINATION

8 BY MR. CLEVINGER:

9 Q. Good afternoon, Ms. Clay.

10 A. Good afternoon, sir.

11 Q. Curtis Capps filed an affidavit about a conversation --
12 let me back up if I may. We've just been handed a copy of this
13 authorization you signed. What's the date on that?

14 A. What is the date?

15 Q. Yes, the date on this authorization, did you sign on the
16 21st day of March 2017?

17 A. 2017.

18 Q. Yes, ma'am, so about two weeks ago you signed this?

19 A. A week.

20 THE COURT: Actually, Counsel, it's a week.

21 Q. (By Mr. Clevenger) Curtis Capps filed an affidavit
22 about a conversation he had with you before the affidavit.
23 According to his affidavit you said you were not represented by
24 an attorney. Is that what you told Mr. Capps at that time?

25 A. I wasn't out there, but see, my health has failed me

1 some so I'm here to give all of my nieces and them, let them take
2 care of mine.

3 Q. Before March of 2017 did anybody ask your permission to
4 file this lawsuit on your behalf?

5 A. No one.

6 Q. Nobody did?

7 A. No.

8 Q. Do you think lawyers like me or Mr. Youngkin or Mr. Goss
9 or anybody else should be able to file lawsuits without your
10 permission?

11 MR. GOSS: Objection, Judge. It has no relevance
12 to --

13 THE COURT: Sustained as to relevance.

14 Q. (By Mr. Clevenger) Who specifically asked you about
15 letting Mr. Goss or Mr. Hoppess represent you in this case?

16 A. No one asked me. I been with my family. I want to stay
17 with them and do what I think is right to do.

18 Q. Well, let me ask it this way: Who gave you the idea to
19 sign this?

20 A. I'm with my family.

21 Q. I understand that.

22 A. Uh-huh.

23 Q. Who gave you the idea to sign this?

24 A. No one.

25 Q. How did you --

1 A. I did receive a letter from Mr. Youngkin -- someone with
2 a check and all of this in it about coming here for this trial.

3 Q. Right, but who handed you this document to sign?

4 A. I have no idea.

5 Q. You don't remember?

6 A. I don't remember. I can't remember when it was given to
7 me.

8 Q. Do you remember even signing it?

9 A. Huh?

10 Q. Do you remember signing it?

11 A. Well, that's my signature and all on there. I remember
12 signing it, yes, sir.

13 Q. But you don't remember who handed this to you to sign?

14 A. No, I can't remember that.

15 Q. Did you know in 2015 when this case was filed that you
16 were a part of this lawsuit?

17 A. Pardon?

18 Q. In 2015 when this lawsuit was filed, did you know then?

19 A. It had started and was going on before I really knew
20 what was really going on. See I had some --

21 Q. Right, but I want to clarify. When this lawsuit was
22 filed, you had not given anybody permission to file on your
23 behalf; is that correct?

24 A. I didn't know because I didn't know anything about this
25 going on like this. It's such a big bunch of heirs and family

1 members. You never know, you know, which way to go about --

2 Q. Right. When this lawsuit was filed you didn't know
3 anything about it, did you?

4 A. Pardon?

5 Q. When this lawsuit was first filed in 2015 you didn't
6 even know anything about it, did you?

7 A. No, I did not.

8 MR. CLEVINGER: Nothing further, Your Honor.

9 MR. GOSS: No more questions.

10 THE COURT: You may step down, ma'am. Thank you.

11 MR. GOSS: Your Honor, I'll offer Exhibit 3.

12 THE COURT: Any objection to 3?

13 MR. CLEVINGER: No objection.

14 THE COURT: 3 will be admitted.

15 (Exhibit 3 offered & admitted)

16 THE COURT: And once again just for purposes of the
17 record, I've crossed out the word State's and put 3/28/17 on each
18 of the stickers.

19 Off the record.

20 (Discussion off the record)

21 THE COURT: Back on the record.

22 MR. GOSS: Judge, that's all I have.

23 THE COURT: Mr. Clevenger?

24 MR. CLEVINGER: I'd call Mr. Goss to the stand.
25 He's offered facts in the form of his statement to the Court.

1 THE COURT: I'm going to have him sit right there
2 and, if you will, pull the mike down to you.

3 Mr. Clevenger, it is my normal procedure to waive
4 the giving of the oath to officers of the Court. Will you agree?

5 MR. CLEVINGER: I'll agree to that.

6 THE COURT: Very well.

7 (Brief interruption)

8 THE COURT: Mr. Goss, please state your name for
9 the record and spell it for the court reporter.

10 THE WITNESS: Jay Goss, J-a-y, G-o-s-s.

11 JAY GOSS,

12 oath having been waived, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. CLEVINGER:

15 Q. Mr. Goss, how many of the 60-plus purported clients in
16 this case have you actually spoken with? Let me broaden that,
17 communicated by email, spoken, communicated in any way?

18 A. I'm not sure I'm going to be able to be accurate, but I
19 believe I have spoken to Samuel Hines, Robert Hines, Virginia
20 Hines, Laurretta Hines, Bonita Thompson, Vanessa Pena, Charlotte
21 Conners, Roberta Harris, Vickie Cole, Billy Hines, Phillip
22 Johnson, and Billy Lines [sic], and Nettie Clay.

23 I believe that would -- the Steptoe is on here and
24 I've spoken to some Steptoes and represented some of them, but I
25 don't think that's the same Steptoe that I would have spoken to.

1 And Deborah Crawford -- and at this time that's my best
2 recollection.

3 Q. So would you agree with me that you've had no
4 communications with most of the people that you claim to
5 represent in this case?

6 A. I would agree with that.

7 Q. Do you think it's important to disclose to this Court
8 and to your opposing parties that you were not actually retained
9 by some of the people that you claim to represent?

10 A. No.

11 Q. So you think you can go into court claiming to represent
12 people that you've never spoken with, they don't know you're
13 claiming to represent them, you think you've got the right to do
14 that?

15 A. Well, you changed the question a little bit. I think I
16 can go into court with people that I've never spoken with before
17 because they're in a big family and they're in a group and
18 they're all similarly situated. They've all had the same thing
19 done to them, talking about the same judgment, and so, yes, I
20 think we can. What we're trying to do and what we've been trying to
21 do is --

22 MR. CLEVINGER: Objection; beyond the scope and
23 nonresponsive.

24 THE COURT: Sustained. He'll be able to
25 cross-examine himself.

1 MR. GOSS: Thank you, Judge.

2 Q. (By Mr. Clevenger) I want to go back to that question.
3 In any case, regardless of who is in it, do you think you have
4 the right to go into court without disclosing to the Court,
5 without disclosing to your opposing party, and without disclosing
6 to your purported client you don't represent, you've not been
7 retained?

8 A. Well, I object to that question because it's not that we
9 haven't been retained. There are many other people that are
10 related to this case, this 285 acres --

11 MR. CLEVINGER: Objection; nonresponsive.

12 THE COURT: Overruled.

13 A. -- that we do not represent. We have only put on the
14 pleadings the people that other family members told us that those
15 people wanted to be represented by us, not anybody else. Some
16 were through emails, but if the family members told us that they
17 knew that these people wanted to be represented and they had
18 emails, we put them on the list.

19 MR. CLEVINGER: Same objection, Your Honor. He
20 didn't answer my question.

21 THE COURT: Overruled.

22 Q. (By Mr. Clevenger) Let me go back and try to rephrase
23 this. Do you think you have the right as an attorney to go into
24 court and claim that you represent specific known individuals
25 without their knowledge, without their permission, without

1 disclosing that to the Court, and without disclosing that to your
2 opposing party?

3 A. No, I don't.

4 Q. But you did that, didn't you?

5 A. I didn't. We had permission from everybody through
6 emails and through requests from family members.

7 Q. Mr. Goss, isn't it true you've already admitted -- and
8 I'll go back to the specific names here. Let's look at No. 64
9 and 65, Earthly Marie Hutchinson and Ronald Richardson. You
10 admitted you had no contact, no communication, no nothing through
11 anyone, directly, or indirectly; isn't that correct?

12 A. I did say that, but that doesn't mean that Mr. Hoppess
13 didn't have contact with them and that doesn't mean
14 Mr. Rodgers --

15 MR. CLEVINGER: Objection. Mr. Hoppess and
16 Mr. Rodgers aren't here.

17 A. That's exactly right, but somebody would have had
18 communication with them. You didn't --

19 Q. (By Mr. Clevenger) You don't know that, do you? You're
20 guessing, aren't you?

21 A. What I'm telling is how we approached this. That's what
22 I'm telling you.

23 Q. I understand how you approached it.

24 A. Okay.

25 Q. I'm asking you, what gives you the legal right to come

1 in here and represent these people without their knowledge and
2 permission and without telling the Court and without telling us?

3 A. Because we had permission.

4 Q. From who?

5 A. From the family members.

6 Q. No, no, no. Specifically 64 and 65, Hutchinson and
7 Richardson, who gave you permission?

8 A. I don't know the answer to that question.

9 Q. Well, don't you think that's important to know? You
10 have the burden, don't you?

11 A. Yes, that's true. I do have the burden. And if the
12 Court strikes those two I suspect that we'll either get an
13 authorization or won't get an authorization.

14 Q. Let's look at some other names. Let's go up to No. 36,
15 Lawrence Al James. Where's your authorization in any way, shape,
16 or form to represent him? That's No. 36.

17 A. I don't know. That would be a Mr. Hoppess question.

18 Q. Lee A. Jackson, where is your authority there?

19 A. F-4, and both on an email on March 4, 2015.

20 Q. Where is that email?

21 A. It's in your possession. It's F-4.

22 Q. I'm looking at your own exhibit here, J. It's 38 and it
23 doesn't indicate that he's in any email.

24 A. Well, let's look at F-4.

25 Q. Mr. Goss, would you agree with me that that's not in

1 evidence, that's -- actually I objected and that was sustained,
2 wasn't it?

3 A. You didn't ask me what was in evidence. You said, what
4 was my authority and I said it was that email because we were
5 authorized to proceed with those family members. You objected
6 because it was hearsay, but that doesn't mean that we weren't
7 authorized and we don't have any permission.

8 Q. But you don't have any proof in front of this Court
9 that's admissible as evidence that you represent this person, do
10 you?

11 A. I have my testimony. We've got an email that was --

12 Q. That email isn't in evidence --

13 A. Well, that's --

14 Q. -- is it?

15 A. My testimony is we got the email and that's how we have
16 permission to represent.

17 Q. What about 39, Marion Godine?

18 A. I don't have anything on her.

19 Q. Isn't it true that in many of these cases you just
20 looked at pleadings in other cases and just listed the names and
21 put them in this lawsuit?

22 A. That's not true.

23 Q. So you're telling me -- for example, let's look at
24 No. 48 through, say, 56. All these people, the only thing you've
25 listed is that they were parties in Cause No. 12-0013622. Are

1 you telling me there's some other authorization beyond that?

2 A. We were representing them. They were our clients in
3 that case.

4 Q. Well, I have to point out that your authority has not
5 yet been challenged in that case, and the fact that you claim to
6 represent them in that case is not evidence in either case at
7 this point that you represent them in this case?

8 A. The authority was challenged in that case. Mr. Capps
9 filed on the appeal after -- in footnote four, after filing his
10 notice of appeal Capps filed a motion to partially dismiss
11 appellees' cross-appeal arguing that appellees' appellate counsel
12 seeks to represent non-clients on appeal. Exactly the same thing
13 that is here. The record --

14 Q. But it's really not exactly --

15 A. I'm not through.

16 Q. Okay.

17 A. The record reflects that Capps sued the known and
18 unknown heirs of Priscilla Foster. At trial the unknown heirs
19 were represented by an attorney ad litem Jack Dillard while
20 Rodgers represented the known heirs. The record does not show
21 that Dillard filed the notice of appeal; however, the Texas
22 Supreme Court recognized that a person or entity who is not named
23 party in the trial court may pursue an appeal in order to
24 vindicate important rights.

25 In his response to Capps' motion, Rodgers relies on

1 the virtual representation doctrine. That is his response to the
2 motion to partially dismiss appellees' cross-appeal, which allows
3 the litigant be deemed a party if it will be bound by the
4 judgment. Its privity of interest appears from the record and
5 there is an identity of interest between the litigant and a named
6 party. And testimony goes on to say that they overruled,
7 therefore, based on the forgoing we denied Capps' partial motion
8 to dismiss appellees' cross-appeal. So it was raised in that
9 case and it was denied by 10th Court of Appeals.

10 Q. Let's look at apples and oranges for a moment then.
11 Isn't it true in that case those parties you're referencing were
12 represented in the trial court by an ad litem? Is that correct?

13 A. That is correct.

14 Q. And isn't it true that Mr. Rodgers openly said to the
15 Court and everybody else that he was claiming to represent them
16 under the virtual representation doctrine?

17 A. That's true.

18 Q. You didn't do that, though, here, did you?

19 A. We have. In fact --

20 Q. When?

21 A. -- we filed a response. In our response that we filed.

22 Q. When you got caught, then you got a virtual
23 representation doctrine, didn't you?

24 A. No.

25 Q. What I'm saying is unlike Mr. Rodgers in the 10th Court

1 of Appeals where he said up front, we're coming into this saying
2 that we're claiming to represent these other people by virtual
3 representation, you didn't do that in this trial, did you?

4 A. I don't think Mr. Rodgers did that --

5 MR. CLEVINGER: Objection.

6 A. -- in the very beginning.

7 MR. CLEVINGER: Nonresponsive.

8 THE REPORTER: One at a time, please.

9 THE COURT: Objection overruled.

10 A. I don't think Mr. Rodgers did that at the time. I think
11 he did that at the time that Mr. Youngkin filed a motion to
12 dismiss the cross-appeal. I think that's when he came in with
13 the virtual representation doctrine.

14 Q. (By Mr. Clevenger) Mr. Goss, can you go to the records
15 and prove any of that?

16 A. I can't. I said, I think. I said, that's what I think.

17 Q. You didn't work that case, did you?

18 A. I didn't work what we're talking about in that case, no.

19 Q. So you can't deny or dispute whether or not, in fact,
20 Mr. Rodgers disclosed up front that, I'm claiming to represent
21 all these other heirs via this vicarious representation doctrine?

22 A. No.

23 Q. You don't know?

24 A. No.

25 Q. Wouldn't you agree with me that it's pretty important to

1 disclose that stuff to the Court?

2 A. No, I wouldn't.

3 Q. So you are back to the position you think you can go
4 into the courtroom without the permission of the purported client
5 and without telling the Court and without telling your opposing
6 parties that you've not actually been retained?

7 A. No, to permission. I don't think being retained has
8 anything to do with that, but I don't think you can go in without
9 some type of permission.

10 Q. Why didn't you file this as a class action?

11 A. Because I don't think it would fit under a class action.

12 Q. Well, isn't it because there's not a commonality of
13 interest that would fit under a class action?

14 A. No. There is a commonality of interest. I just think
15 that there's not too many people that couldn't get the people
16 that are being represented in there.

17 Q. So in other words it could have been done; you could
18 have actually been retained by these people, but you chose not
19 to?

20 A. No, I don't -- I don't understand the question.

21 Q. Let me ask you a different question. You said earlier
22 from the stand -- and I wrote this down to make sure I got it
23 right. You said you don't have to have authority to represent
24 every single party in order to prosecute the case?

25 A. That's true.

1 Q. That's what you said. Do you believe that to be the
2 case?

3 A. Yes, I do.

4 Q. Can you point to any authority whatsoever for that
5 proposition?

6 MR. GOSS: (Tendered documents to Counsel and the
7 Court).

8 Q. (By Mr. Clevenger) I'm familiar with this case,
9 Mr. Goss. And where in this case exactly does it say - and I
10 quote - you don't have to have authority to represent every
11 single party to prosecute the case?

12 A. This is Armstrong versus Rice. It was a case where the
13 comptroller was being sued for -- to get out of a lease because
14 they didn't want him on the property. On Page 5 of the opinion,
15 as I have it here, it is -- counsel filed three affidavits out of
16 all of the people that were there. Trial court said, each
17 affidavit is worded differently. None employs great specificity
18 in defining the scope of authority of counsel.

19 Their cumulative effect, however, is indicative of
20 some evidence of authority of counsel to prosecute the present
21 action. Counsel for appellees was not required to establish his
22 authority to represent all litigants so aligned. Any error in
23 finding authority to represent all, if indeed his authority was
24 limited only to some, was not reversible. And so they overruled
25 the motion to show authority.

1 Q. But isn't it true that in that case the people who came
2 in to testify testified that they actually had been in direct
3 communication with all of the purported parties in that case?

4 A. I don't know that to be true.

5 Q. Well, let's look up here a little further. The
6 paragraph above where you started highlighting, counsel for the
7 appellees responded by filing sworn affidavits of appellees, then
8 finally stated that each had been authorized by his relatives to
9 employ the counsel whose authority was in question.

10 A. That's exactly the same case here. Ms. Deborah Crawford
11 testified that she had been authorized by her relatives to
12 employ. Now, whether or not each one of these was in direct
13 contact with the relative or whether or not they just simply had
14 an email or somebody asked them to do it -- but this case is
15 almost identical to our case. And the Courts have said that all
16 we're trying to do is simply prosecute the case. Do we have
17 authority to prosecute the case? Yes, we have authority to
18 prosecute the case. We don't have to represent every single
19 person here and then when you get into the virtual representation
20 doctrine we need to represent everybody that's similarly
21 situated.

22 Q. But you don't need to have their permission?

23 A. We didn't put anybody on here that we did not think that
24 we had permission.

25 MR. CLEVENGER: Objection; nonresponsive.

1 THE COURT: Sustained.

2 A. We need permission to represent somebody. If we -- I
3 don't know why those three out of the 66 are blank, but I'm not
4 saying that we don't have their permission. There was
5 Mr. Rodgers, who we took these cases over with, and there was
6 Mr. Hoppess. And so we did not put somebody on here -- there are
7 many more people related to the four descendants that we could
8 have put on here if we wanted to list everybody that we thought
9 on the entire family tree, but we didn't do that.

10 Q. (By Mr. Clevenger) And you don't think that that's
11 deceiving to the Court that, well, we do have authority for some,
12 but not for others?

13 A. We gave the Court the email. Now, from a technical
14 standpoint if he sustains the objection because it's hearsay --
15 but we had an email that said, why is Mr. Youngkin continuing to
16 contact us when Mr. Hoppess is representing us. Would you please
17 ask Mr. Hoppess to stop that -- I mean, basically that's what the
18 email said. And so that's what our authority is.

19 Q. I want to read to you Penal Code Section 38.112, a
20 person commits an offense with intent to obtain an economic
21 benefit the person knowingly institutes a claim or pursues a
22 claim the person has not been authorized to pursue. When you
23 filed this case in 2015 without Ms. Nettie Clay's knowledge or
24 approval, isn't that exactly what you did?

25 A. No.

1 Q. So you did not knowingly institute a suit or a claim
2 that you had not been authorized by her to pursue?

3 A. Correct.

4 Q. How did she authorize you if she didn't know anything
5 about it?

6 A. Well, because her family knew something about it.

7 Q. They knew something about it and that's authorization
8 for you to file suit without permission?

9 A. Well, I mean, yes, I would say it is. Her family asked
10 us to.

11 Q. She lives here in Bryan. You couldn't ask her?

12 A. We could have, probably, but her family came to us.

13 Q. So if my brother goes -- whom I may not have a good
14 relationship -- goes to Houston and says, I want you to file suit
15 on behalf of Ty Clevenger. Without my permission, would you
16 think that's okay?

17 A. I wouldn't do that with you certainly.

18 Q. So why her?

19 A. Because her family came to us and asked us to.

20 Q. My brother is my family, isn't he?

21 A. Yes.

22 Q. You are being paid to prosecute this case, aren't you?

23 A. Sometimes.

24 Q. But you're not paid by your purported clients, are you?

25 A. We are.

1 Q. Is there anybody else paying you for prosecuting this
2 case?

3 MR. GOSS: Your Honor, I would object to that. I'm
4 not sure what --

5 MR. CLEVINGER: This --

6 MR. GOSS: -- relevance that has.

7 MR. CLEVINGER: This case is not being pursued. I
8 think there is another client out there that's not being
9 disclosed.

10 THE COURT: Then you can ask him if there's a
11 client that's not been disclosed.

12 Q. (By Mr. Clevenger) Is there someone who financially,
13 directly or indirectly, that is controlling this case that's not
14 been disclosed?

15 A. No.

16 Q. But you are being paid by persons other than your
17 purported clients?

18 A. No.

19 Q. Only your clients are paying in you this case?

20 A. Yes.

21 Q. And you've now disclosed every single client that you
22 claim to represent?

23 A. So far. There may be other people that we get. When we
24 got your motion to compel to show authority we sent out to
25 everybody authorizations and have gotten these back. And so we

1 may have others related to that.

2 Q. You testified earlier with respect to your Exhibit C-13
3 through C-16 that when Mr. Youngkin served you with notices of
4 depositions you did try to contact those people; is that correct?

5 A. Either me or Mr. Hoppess. I think I was at most of
6 those depositions and Mr. Hoppess was at some of them.

7 Q. I'm talking specifically about these four people, one of
8 whom is Mary Catherine Myers-Anderson Shine, three other people
9 besides her in Exhibit C-13 through C-14. Mr. Youngkin served
10 notices of deposition and you never produced those people; is
11 that correct?

12 A. I would say if you want to know my answer, I talked to
13 Karl about that and he did talk to --

14 MR. CLEVINGER: Objection; hearsay.

15 A. I don't know what -- repeat the question, please. I'm
16 not sure.

17 Q. (By Mr. Clevenger) Well, I guess my question is, you're
18 claiming to represent Ms. Shine and these three other people
19 here. Mr. Youngkin served you with a deposition notice. You
20 waved that around to say he's acknowledged our authority to
21 represent them, yet you did not produce them for testimony, did
22 you?

23 A. No, because the dates that he wanted the depositions
24 were not convenient for these people.

25 Q. Do you personally know that for a fact?

1 A. Look, I don't know that.

2 Q. That's all I need to know,

3 A. But I got that from Mr. Hoppess.

4 MR. CLEVINGER: Objection; hearsay.

5 THE COURT: Counsel, let me see if I can short
6 circuit this because it's 6:00 and my court reporter is a single
7 parent. I read Rule 12 as being a situation where there is a
8 question of authority for an individual attorney to bring a claim
9 at all, not as opposed to bring it for Billy and Sue and Bobby,
10 but not for Jimmy and Eddie. Am I wrong on that? Because if I'm
11 not wrong, clearly he has the authority to bring it on behalf of
12 all the people that he's given affidavits for and has represented
13 in the past. I agree with you, perhaps, that he doesn't have
14 authority for three people, at least I don't see any, but I think
15 what the rule is talking about is, does he have the authority to
16 bring the case at all. Am I wrong on that?

17 MR. CLEVINGER: I believe so, Your Honor. I
18 believe he can bring cases on behalf of his clients, but he can't
19 bring cases on behalf of people --

20 THE COURT: This is not separate cases. It's a
21 case. And the question is, is he authorized in this cause number
22 to bring this case on behalf of anybody?

23 MR. CLEVINGER: Well, Your Honor, if you read the
24 text of the rule --

25 THE COURT: Which I have.

1 MR. CLEVENGER: Right, I know. You're right. But
2 the latter part says, if the attorney failed to show authority,
3 quote, the Court shall refuse to permit the attorney to appear in
4 the cause and shall strike the pleadings.

5 It doesn't say just with respect to the ones that
6 he is or is not authorized to represent and I think there's clear
7 reason for that.

8 THE COURT: Well, wouldn't you say that reaches an
9 absurd result?

10 MR. CLEVENGER: I would not because I think it's
11 intended to prevent the kind of chicanery that we have here.

12 THE COURT: Well, Counsel, we need to be very
13 careful when we're throwing around penal codes and chicanery and
14 stuff like that. I just want you to focus on the question at
15 hand. Is there authority? Is there not authority? And if the
16 authority is there for some, doesn't that mean that the suit can
17 go forward at least as to those people?

18 MR. CLEVENGER: I am not aware of any reported case
19 that allowed splitting of the baby where the Court said, okay,
20 you didn't have authority for all these people, but you did have
21 for these people so you can stay in the case for --

22 THE COURT: And let's do the converse. Are you
23 aware of any case that says they can't? You say you do not have
24 a case that says that that's okay. Do you have a case that says
25 it's not okay?

1 MR. CLEVENGER: I'm not aware of a reported case
2 that's dealt with this specific situation.

3 THE COURT: And I think the reason is because it's
4 pretty clear that if there's authority for anyone for the case to
5 go forward, the case gets to go forward. Now, it may not be
6 binding. It may not -- people may not be able to join in the
7 benefit of what happens. It may be certain things happen.

8 But I simply think that in this particular case
9 there has been a showing of authority under Rule 12. I may be
10 wrong and you can certainly talk to the folks in Waco or wherever
11 you may get sent in this day and time, but I'm going to overrule
12 the motion to show authority -- or actually I will grant his
13 authority to try the case.

14 And as it relates to the other people, we haven't
15 had a trial yet and I will see what happens when we get there.
16 And if those people are not represented, they wouldn't be bound
17 by the judgment, but I'm going to allow the authority to proceed.

18 MR. YOUNGKIN: Your Honor, if I might, we had
19 scheduled last week some summary judgment motions. Mr. Goss came
20 and said we only thought we were here on this particular motion
21 we've heard today.

22 THE COURT: We were and that's why I said what I
23 did when I came in.

24 MR. YOUNGKIN: So I filed this and we gave them the
25 25-day notice, but I really would like for the Court to -- these

1 are not evidence matters. They are legal principles, at least
2 for two of those and --

3 THE COURT: I will take a look at your motions and
4 I will determine whether or not they will be set for hearing.

5 MR. YOUNGKIN: Thank you, Judge.

6 MR. GOSS: Respectfully we have --

7 THE COURT: I understand your position as well.

8 MR. GOSS: Okay. But you indicated that you were
9 going -- we can't go forward until two things happen: Number
10 one, you tell us if we can take Ms. Burns' deposition or we don't
11 have to because she can't testify, which you said you were going
12 to rule on today. And that's okay, but I just --

13 THE COURT: I'm not going to rule on anything today
14 that wasn't set today. I'm starting to take control of my docket
15 again. This is my docket. It's not Mr. Youngkin's. It's not
16 yours. It's mine.

17 MR. GOSS: I would just say then that we need that
18 ruling before we set anything.

19 THE COURT: I understand. I understand what your
20 position is. I understand what Mr. Youngkin's position is. I
21 will make the decisions I believe are appropriate.

22 MR. GOSS: Thank you, Judge.

23 THE COURT: Thank you.

24 Do you have all the exhibits? F-1 through 3, 4 is
25 for record purposes only.

1 MR. CLEVINGER: One quick thing. We would like to
2 sever this order on showing authority to prosecute. We'd like to
3 sever this matter.

4 THE COURT: Sever what matter?

5 MR. CLEVINGER: Just the order saying they have
6 authority to prosecute. We'd like to take that up on appeal.

7 THE COURT: No, that's not an appropriate thing to
8 sever.

9 MR. CLEVINGER: Grant permission for
10 interlocutory -- I take that back.

11 THE COURT: You don't get an interlocutory, but if
12 you would like to file a writ of mandamus, go right ahead.

13 (Proceedings adjourned)

1 THE STATE OF TEXAS)

2 COUNTY OF BRAZOS)

3
4 I, Wendy L. Kirby, Official Court Reporter for the
5 361st Judicial District Court of Brazos County, Texas do hereby
6 certify that the above and foregoing contains a true and correct
7 transcription of all portions of evidence and other proceedings
8 requested by counsel to be included in this volume of the
9 Reporter's Record, in the above-entitled and numbered cause, all
10 of which occurred in open court or in chambers and were reported
11 by me.

12 I further certify that this Reporter's Record of
13 the proceedings reflects the exhibits, if any, offered by the
14 respective parties.

15 WITNESS MY OFFICIAL HAND THIS THE 29th day of May,
16 2017.

17
18 /s/ Wendy L. Kirby
19 WENDY L. KIRBY, TX CSR 6527
20 Official Court Reporter
21 361st Judicial District Court
22 300 East 26th Street, Suite 420
23 Bryan, Texas 77803
24 979-361-4381 Phone
25 Certification Expires: 12/2018

Ref. No.: 17-0501

Wendy L. Kirby, CSR
Official Court Reporter
361st District Court

1 TRIAL COURT CAUSE NO. 13-002483-CV-361

2 SAMUEL RAY HINES, ET AL)(IN THE DISTRICT COURT OF
 3 VS.)(BRAZOS COUNTY, TEXAS
 4 CURTIS CAPPS)(361ST JUDICIAL DISTRICT

5
 6 I, Wendy L. Kirby, Official Court Reporter for the
 7 361st Judicial District Court of Brazos County, Texas, do hereby
 8 certify that the following exhibits constitute true and complete
 9 duplicates of the original exhibits, excluding physical evidence,
 10 offered into evidence during the Motion to Compel Counsel to Show
 Authority in the above-entitled and numbered cause as set out
 herein before the Honorable Steve Smith, Judge of the 361st
 Judicial District Court of Brazos County, Texas, said hearing
 beginning March 28, 2017.

11 I further certify that the total cost for the
 12 preparation of this Reporter's Record is \$394.00 and will be paid
 by Mr. Bill Youngkin.

13 WITNESS MY OFFICIAL HAND on this the 29th day of
 14 May, 2017.

15
 16
 17
 18 /s/ Wendy L. Kirby
 WENDY L. KIRBY, TX CSR 6527
 Official Court Reporter
 361st Judicial District Court
 300 East 26th Street, Suite 420
 Bryan, Texas 77803
 979-361-4381 Phone
 21 Certification Expires: 12/2018

22
 23
 24
 25 Ref. No.: 17-0501

Wendy L. Kirby, CSR
 Official Court Reporter
 361st District Court

Karl Hoppess

From: Deborah Harris <Deborah.Harris@tjtd.texas.gov>
Sent: Wednesday, December 17, 2014 6:41 AM
To: Karl C. Hoppess % Tiffany (kchoppess@swbell.net)
Cc: 'Lauretta Hines'; Lauretta Hines (lhines1957@gmail.com); harriswiggins@yahoo.com; Bonita Thompson; Thompson, Bonita
Subject: Foster & Scott Heirs Contact Information.docx
Attachments: Foster & Scott Heirs Contact Information.docx

Good morning sir, attached you will find the contact information for the family members that have agreed to hire you as our new counsel. There are a still a few members I was not able to contact but who have been involved in the previous proceedings, however as soon they contact me I will forward you their information. I was the person speaking to you via the phone conference. If you should have any additional questions, comments or concerns please let me know. If there is another person I need to begin including in our email correspondence please let me know.

Thank you in advance,

Texas Juvenile Justice Department
Ms. Deborah Harris M.S & M.A
State Programs & Facilities
Training Building Office: 979-542-4613
Cell: 254-722-2450
Deborah.Harris@tjtd.texas.gov

PVAMU *** People can alter their lives by altering their ATTITUDES..

F-1



Foster & Scott Heirs Contact Information

Virginia Harris
1022 Birnham Woods Blvd.
Pasadena, TX 77503
(713) 636-9090 (H)
(713) 459-6915 (C)
Email: ginahomecookin@aol.com

Phillip W. Johnson
1541 Shalain Dr. Garland, TX 75040
Cell 2142022019
Email: steelephill@hotmail.com

Charlotte Connors
1409 Whitney Dr.
Garland Texas 75040
hm.number:972/494/7307 cell:972/802/7226
Email: fullmoon1956a@gmail.com

Mary Shine
2721 Cardinal Ave
Bakersfield, Ca 93306
562-508-5399

Janice Farley
5608 Rock Valley Dr
Fort Worth, Tx 76244
562-883-0470
Email: ladyjay7@msn.com

Robert Hines
1810 10th, Galena Park, Tx.
Phone: 832-495-5772
Email: [robert.hines6565@sbcglobal.net](mailto:<robert.hines6565@sbcglobal.net)

Deborah Harris
3000 Indian Trail
Bryan, Texas 77803
Cell: 979-218-6288
Email: harriswiggins@yaoo.com alternative Deborah.Harris@tjtd.texas.gov

Hollis Godine 17547 Red
Oak Houston TX 77090
281-895-9923
hgodine@yahoo.com or Regina.godine@yahoo.com

Maurice Godine
11040 Santa Anita St (Adelanto, Ca 92301-4643)
760-530 9193 Email: maurice.godine@yahoo.com
Stanley Godine
7433 Caddo Rd (Houston, Tx 77016)
281-383 8734

Karl Godine
4310 Fallen Oak Dr. (Houston, Tx 77091)
713-290 8438 Email: rhondabanks53@yahoo.com

Charmaine Traylor
P.O. Box 1720
Cedar Hill, Tx. 75106-1720
Email: cytraylor@traylormotorhomes.com

Billy G. Hines, Jr.,
2102 Pitching Court, Houston, TX 77089
Home # (281) 481-6364, Cell # (713) 553-6866
Email: ncccp@sbcglobal.net

Samuel Ray Hines,
2103 Verona Drive, Pearland, TX 77581
Home # (281) 464-0223, Cell # (713) 922-1238
Email: shines1@houstonisd.org

Rockell Jiles
21315 Sage Flower Court
Humble, Texas 77338
(281) 235-9865
rjiles30@gmail.com

Ronald Kelley
2295 Angelina Beaumont, Texas 77701
409-926-7804
rkelley0824@gmail.com alternative Email: rkelley@beaumont.k12.tx.us

Vanessa Richardson Pena
3513 Tanglewilde
Houston, TX 77063
713 825-7033
penav@att.net

Vickie Johnson-Cole
2802 Lois Ln.
Rowlett Tx. 75088
Email: Vickie.Johnson-cole@Allstate.com
Alternative Email: Oh_hellvickie@live.com

Bonita Thompson
501 Marsh Cove
Killeen, Texas
254-289-1754
bthompson15@hot.rr.com (personal)
bthompson@profddata.com (work)

Lauretta N. Hines,
1528 Kirkman St.
Lake Charles, LA 70601.
832-724-7209 cell, 337-564-5662 home
Email: laurettahines@yahoo.com
Alternative Email: lhines1957@gmail.com

Marion Godine, Ed.D
21315 Sage Flower Court (Humble, Tx 77338
832-723 8101 Email: mccgodine@yahoo.com



Marion Godine, Ed.D.

"The Lord's blessing is our greatest wealth.

All our work adds nothing to it!"

Proverbs 10:22

Karl Hoppess

From: Deborah Harris <Deborah.Harris@tjtd.texas.gov>
Sent: Sunday, February 08, 2015 2:50 PM
To: Karl C. Hoppess % Tiffany
Cc: Laretta Hines; Bonita Thompson
Subject: Fwd: Alex Scott Case

FYI please see the correspondence below and give us your thoughts. Thank you

Deborah Harris MS, MA Sent from my iPhone

Begin forwarded message:

From: Marion Godine <mcgodine@yahoo.com>
Date: February 8, 2015, 2:18:53 PM CST
To: Deborah Harris <deborah.harris@tjtd.texas.gov>, Laretta Hines
<laurettahines@yahoo.com>, Rkelley <rkelley@beaumont.k12.tx.us>, Bonita Thompson
<bthompson@profddata.com>
Subject: Alex Scott Case
Reply-To: Marion Godine <mcgodine@yahoo.com>

Deborah,

Please check with Attorney Hoppess to see if my name and some other heirs are on the list as being represented. Some of us are getting letters sent to us from the courts and some are not. The following names have been sent separate letters as well as a letter to Hoppess:

Ronald Kelley
Maurice Godine
Hollis Kevin Godine
Stanley James Godine
Karl R. Godine
Mary Catherine Myers-Anderson
Annette Elaine Solomom-Strong
Curtis Raythiel Solomom
Lannette Aileen Solomon
Linda Joyce Scott
Lawrence Al James
Lee Adolphus Jackson

Rockell Jiles
Marion Godine
Wanda Goss
Antoinette Preston

I think our names have been listed separately because we all filed letters after the citation where your previous letter filed on your behalf for the citation. Could you please double check.

I am still receiving mail from the courts and Youngkin and I thought that it should be going to Attorney Hoppess.

Thanks.

Houston, Texas 77051

Humble, Texas 77338

Sent from my Samsung Galaxy Tab

Karl Hoppess

From: Deborah Harris <Deborah.Harris@tjtd.texas.gov>
Sent: Tuesday, March 03, 2015 7:46 AM
To: Karl C. Hoppess % Tiffany (kchoppess@swbell.net)
Cc: 'mcgodine@yahoo.com'; 'Lauretta Hines'; Bonita Thompson
Subject: Ensuring all family members have been added to your list

Good morning sir,

Just as a follow up, one of our family members who recently joined us (not a part of the original Attorney Rodgers clients list) has continued to received letters from Attorney Youngkin, can you verified that you received her address from us and that she has been added to your clients list? She has participated with the phone conference we had with you and would like to be represented by you. There should be a list that I sent you with several new members who were not on the list Mr. Rodgers sent you.

Dr. Marion Godine
21315 Sage Flower Crt
Humble, Texas 77338
mcgoine@yahoo.com

Thank you in advance,

Ms. Deborah Harris M.S & M.A
State Programs & Facilities
Training Building Office: 979-542-4613
Cell: 254-722-2450
Deborah.Harris@tjtd.texas.gov

PVAMU *** People can alter their lives by altering their ATTITUDES..



Karl Hoppess

From: harriswiggins <harriswiggins@yahoo.com>
Sent: Wednesday, March 04, 2015 5:52 AM
To: Karl Hoppess
Cc: laurettahines@yahoo.com; Bonita
Subject: Fwd: Alex Scott Heirs

FYI sir

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: mcgodine
Date: 03/04/2015 2:14 AM (GMT-06:00)
To: harriswiggins@yahoo.com, bthompson15@hotmail.com, bthompson@PROFDATA.COM, laurettahines@yahoo.com
Subject: Alex Scott Heirs

The other persons who are not on the attorney's list and should be are:

Rockell M. Jiles
21315 Sage Flower Court
Humble, Texas 77338

Karl R. Godine
4310 Fallen Oak Drive
Houston, Texas 77091

Lawrence Al James
1405 Anne Avenue
Houston, Texas 77045

Lee A. Jackson
1405 Anne Avenue
Houston, Texas 77045

Wanda Goss
13702 Broken Bridge
Houston, Texas 77085

Antoinette Preston
4068 Barberry
Houston, Texas

Ronald Kelley
2295 Angelina
Beaumont, Texas 77701

Lanette Aileen Solomon
4421 Sterling Street
Houston, Texas 77051

Gwendolyn D. Solomon
4421 Sterling Street
Houston, Texas 77051

Curtis Raythiel Solomon
1822 Pecan Lane
Humble, Texas 77396

Beverly Kay Solomon-Turner
4421 Sterling Street
Houston, Texas 77051

Stanley Godine
7433 Caddo
Houston, Texas 77016

Annette Elaine Solomon-Strong
4421 Sterling Street

Courtney Godine-Ford
21325 Sage Flower Court

MY AUTHORIZATION FOR MR. HOPPESS
AND MR. GOSS TO ACT AS MY ATTORNEY

I, hereby confirm that Karl C. Hoppess of Karl C. Hoppess & Associates, P.C., and Jay Goss of Bruchez, Goss, Thorton & Mernoff, P.C. are authorized to prosecute and act on my behalf in Cause No. 13-002483-CV-361, *Samuel Ray Hines, et al. v. Curtis Capps, Buetta Scott and Rajena Scott.*

Signed this 17 day of March, 2017.

Robert Hines
(Sign Above)
Print Name: Robert Hines

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____



MY AUTHORIZATION FOR MR. HOPPESS
AND MR. GOSS TO ACT AS MY ATTORNEY

I, hereby confirm that Karl C. Hoppess of Karl C. Hoppess & Associates, P.C., and Jay Goss of Bruchez, Goss, Thorton & Mernoff, P.C. are authorized to prosecute and act on my behalf in Cause No. 13-002483-CV-361, *Samuel Ray Hines, et al. v. Curtis Capps, Buetta Scott and Rajena Scott*.

Signed this 13th day of March, 2017.

Virginia Harris

(Sign Above)

Print Name: Virginia Harris

(Sign Above)

Print Name: _____

(Sign Above)

Print Name: _____

(Sign Above)

Print Name: _____

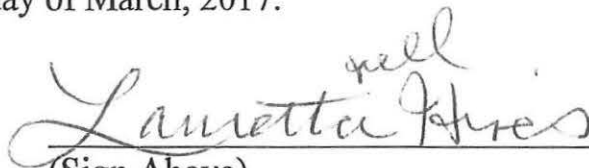
(Sign Above)

Print Name: _____

MY AUTHORIZATION FOR MR. HOPPESS
AND MR. GOSS TO ACT AS MY ATTORNEY

I, hereby confirm that Karl C. Hoppess of Karl C. Hoppess & Associates, P.C., and Jay Goss of Bruchez, Goss, Thorton & Mernoff, P.C. are authorized to prosecute and act on my behalf in Cause No. 13-002483-CV-361, *Samuel Ray Hines, et al. v. Curtis Capps, Buetta Scott and Rajena Scott*.

Signed this 13th day of March, 2017.



(Sign Above)

Print Name: Lauretta N. Hines

(Sign Above)

Print Name: _____

(Sign Above)

Print Name: _____

(Sign Above)

Print Name: _____

(Sign Above)

Print Name: _____

MY AUTHORIZATION FOR MR. HOPPESS
AND MR. GOSS TO ACT AS MY ATTORNEY

I, hereby confirm that Karl C. Hoppess of Karl C. Hoppess & Associates, P.C., and Jay Goss of Bruchez, Goss, Thorton & Mernoff, P.C. are authorized to prosecute and act on my behalf in Cause No. 13-002483-CV-361, *Samuel Ray Hines, et al. v. Curtis Capps, Buetta Scott and Rajena Scott*.

Signed this 13th day of March, 2017.

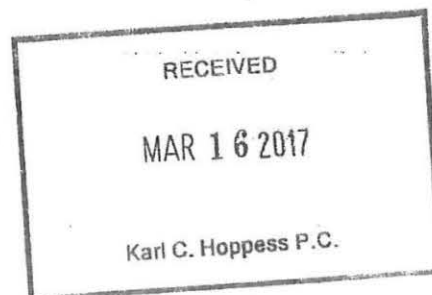
Bonita Thompson
(Sign Above)
Print Name: Bonita Thompson

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____



MY AUTHORIZATION FOR MR. HOPPESS
AND MR. GOSS TO ACT AS MY ATTORNEY

I, hereby confirm that Karl C. Hoppess of Karl C. Hoppess & Associates, P.C., and Jay Goss of Bruchez, Goss, Thorton & Mernoff, P.C. are authorized to prosecute and act on my behalf in Cause No. 13-002483-CV-361, *Samuel Ray Hines, et al. v. Curtis Capps, Buetta Scott and Rajena Scott.*

Signed this 13th day of March, 2017.

Charlotte Conner
(Sign Above) Per telephonic permission (JD)
Print Name: Charlotte Conner

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

MY AUTHORIZATION FOR MR. HOPPESS
AND MR. GOSS TO ACT AS MY ATTORNEY

I, hereby confirm that Karl C. Hoppess of Karl C. Hoppess & Associates, P.C., and Jay Goss of Bruchez, Goss, Thorton & Mernoff, P.C. are authorized to prosecute and act on my behalf in Cause No. 13-002483-CV-361, *Samuel Ray Hines, et al. v. Curtis Capps, Buetta Scott and Rajena Scott.*

Signed this 16th day of March, 2017.

Vickie Johnson Cole
(Sign Above)
Print Name: Vickie Johnson Cole

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

ARCHSTONE WESTCHASE

PAGE 01/01

C0C00CCT07

7717-

LEONARD

Print Name:

Print Name:

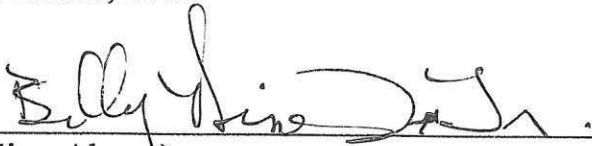
Print Name: _____

Print Name: _____

MY AUTHORIZATION FOR MR. HOPPESS
AND MR. GOSS TO ACT AS MY ATTORNEY

I, hereby confirm that Karl C. Hoppess of Karl C. Hoppess & Associates, P.C., and Jay Goss of Bruchez, Goss, Thorton & Mernoff, P.C. are authorized to prosecute and act on my behalf in Cause No. 13-002483-CV-361, *Samuel Ray Hines, et al. v. Curtis Capps, Buetta Scott and Rajena Scott*.

Signed this 14th day of March, 2017.


(Sign Above)
Print Name: Billy Hines, Jr.

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

MY AUTHORIZATION FOR MR. HOPPESS
AND MR. GOSS TO ACT AS MY ATTORNEY

I, hereby confirm that Karl C. Hoppess of Karl C. Hoppess & Associates, P.C., and Jay Goss of Bruchez, Goss, Thorton & Mernoff, P.C. are authorized to prosecute and act on my behalf in Cause No. 13-002483-CV-361, *Samuel Ray Hines, et al. v. Curtis Capps, Buetta Scott and Rajena Scott.*

Signed this 13th day of March, 2017.

Phillip Johnson
(Sign Above) By permission to Charlotte
Print Name: Phillip Johnson Connor

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

MY AUTHORIZATION FOR MR. HOPPESS
AND/OR DELEGATED AGENTS TO ACT FOR ME AT ANY TIME

I, Leroy Gosselin, do hereby authorize Karl C. Hoppess of Karl C. Hoppess & Associates, P.C., and Jay Gosselin of Jay Gosselin, P.C., Theodor W. Marshall, P.C. are authorized to prosecute and act on my behalf in Case No. 13-001485 CV-0001, Samuel Ray Hines, et al. v. Cheryl Hoppess, Cheryl Gosselin and Jay Gosselin.

Signed this 12th day of March, 2017.

Deborah Crawford

Deborah Crawford

Robert Nancy Harris

Robert Nancy Harris

Harris

Harris

Print Name: _____

Print Name: _____

RECEIVED

MAR 15 2017

Karl C. Hoppess P.C.

MY AUTHORIZATION FOR MR. HOPPESS
AND MR. GOSS TO ACT AS MY ATTORNEY

I, hereby confirm that Karl C. Hoppess of Karl C. Hoppess & Associates, P.C., and Jay Goss of Bruchez, Goss, Thorton & Mernoff, P.C. are authorized to prosecute and act on my behalf in Cause No. 13-002483-CV-361, *Samuel Ray Hines, et al. v. Curtis Capps, Buetta Scott and Rajena Scott*.

Signed this 19th day of March, 2017.

Jackie Johnson
(Sign Above)
Print Name: JACKIE JOHNSON

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

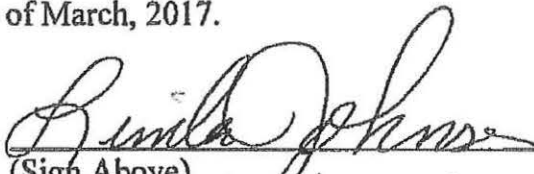
(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

MY AUTHORIZATION FOR MR. HOPPESS
AND MR. GOSS TO ACT AS MY ATTORNEY

I, hereby confirm that Karl C. Hoppess of Karl C. Hoppess & Associates, P.C., and Jay Goss of Bruchez, Goss, Thorton & Mernoff, P.C. are authorized to prosecute and act on my behalf in Cause No. 13-002483-CV-361, *Samuel Ray Hines, et al. v. Curtis Capps, Buetta Scott and Rajena Scott*.

Signed this 3/20 day of March, 2017.


(Sign Above)
Print Name: Linda Johnson

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

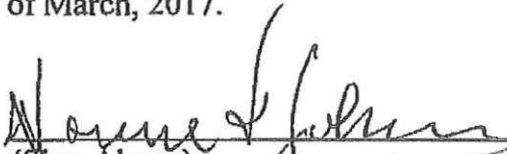
(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

MY AUTHORIZATION FOR MR. HOPPESS
AND MR. GOSS TO ACT AS MY ATTORNEY

I, hereby confirm that Karl C. Hoppess of Karl C. Hoppess & Associates, P.C., and Jay Goss of Bruchez, Goss, Thorton & Mernoff, P.C. are authorized to prosecute and act on my behalf in Cause No. 13-002483-CV-361, *Samuel Ray Hines, et al. v. Curtis Capps, Buetta Scott and Rajena Scott*.

Signed this 19th day of March, 2017.


(Sign Above)
Print Name: Norman V. Johnson

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____


(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

MY AUTHORIZATION FOR MR. HOPPESS
AND MR. GOSS TO ACT AS MY ATTORNEY

I, hereby confirm that Karl C. Hoppess of Karl C. Hoppess & Associates, P.C., and Jay Goss of Bruchez, Goss, Thorton & Mernoff, P.C. are authorized to prosecute and act on my behalf in Cause No. 13-002483-CV-361, *Samuel Ray Hines, et al. v. Curtis Capps, Buetta Scott and Rajena Scott.*

Signed this 19th day of March, 2017.


(Sign Above)
Print Name: Grechiel Johnson

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

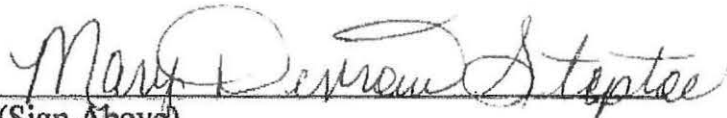
(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

MY AUTHORIZATION FOR MR. HOPPESS
AND MR. GOSS TO ACT AS MY ATTORNEY

I, hereby confirm that Karl C. Hoppess of Karl C. Hoppess & Associates, P.C., and Jay Goss of Bruchez, Goss, Thorton & Mernoff, P.C. are authorized to prosecute and act on my behalf in Cause No. 13-002483-CV-361, *Samuel Ray Hines, et al. v. Curtis Capps, Buetta Scott and Rajena Scott*.

Signed this 19 day of March, 2017.


(Sign Above)

Print Name: Mary Devrou Steptoe

(Sign Above)

Print Name: _____

(Sign Above)

Print Name: _____

(Sign Above)

Print Name: _____

(Sign Above)

Print Name: _____

MY AUTHORIZATION FOR MR. HOPPESS
AND MR. GOSS TO ACT AS MY ATTORNEY

I, hereby confirm that Karl C. Hoppess of Karl C. Hoppess & Associates, P.C., and Jay Goss of Bruchez, Goss, Thorton & Mernoff, P.C. are authorized to prosecute and act on my behalf in Cause No. 13-002483-CV-361, *Samuel Ray Hines, et al. v. Curtis Capps, Buetta Scott and Rajena Scott.*

Signed this 17 day of March, 2017.

Paul Hines
(Sign Above)
Print Name: Paul Hines

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

2016 WL 279022

Only the Westlaw citation is currently available.

SEE TX R RAP RULE 47.2 FOR
DESIGNATION AND SIGNING OF OPINIONS.

Court of Appeals of Texas,
Waco.

Curtis Capps, Appellant
v.

The Known and Unknown Heirs
of Priscilla Foster, et al, Appellees

No. 10-14-00061-CV

Opinion delivered and filed January 21, 2016

From the 272nd District Court, Brazos County, Texas,
Trial Court No. 12-001362-CV-272

Attorneys and Law Firms

Jay B. Goss, W. Stephen Rodgers, Karl C. Hoppess,
Daniel P. Meanor, for Known and Unknown Heirs of
Priscilla Foster.

Bill Youngkin, for Curtis Capps.

Before Chief Justice Gray, Justice Davis, and Justice
Scoggins

MEMORANDUM OPINION

AL SCOGGINS, Justice

*1 In four issues, appellant, Curtis Capps, challenges the trial court's judgment entered in favor of appellees, the known and unknown heirs of Priscilla Foster, in a dispute involving title to land in Brazos County, Texas. Because we conclude that the trial court's judgment in favor of appellees is supported by legally and factually sufficient evidence, and because we cannot say that the trial court's judgment is void under the principles of comity, we affirm the portion of the judgment regarding title to the land in question. We also reverse and render judgment in favor of appellees/cross-appellants with regard to the taxation of costs.¹

I. BACKGROUND

This case involves a 285.5-acre tract of land in Brazos County, Texas, with a storied past. Witnesses at trial testified that Priscilla Foster was a slave who was born in or around 1827. The witnesses testified that her "master" was Sam Foster who did not marry Priscilla but fathered seven children with her. The record evidence demonstrates that in 1875, the land in question was put "in trust" with four men: Nelson Constant, Alex Scott, Wyatt Butler, and Peter Morgan "as trustees for various and sundry parties." Apparently, the terms and reasons for the trust were lost, but it appears that Priscilla's heirs began to use and enjoy this tract of land at this time.

In 1922, Nelson Constant, the last surviving "trustee" of the land, made a number of conveyances to the aging children of Priscilla as grantees.² The face of the deeds reflect that the grantees had paid for the land many years ago, but a deed was never made for them. In this appeal, the Priscilla Foster, Henry Foster, Tom Hill, and Mattie Carter tracts are at issue, and Capps asserts that the tracts comprise 64.351 surface acres of the 285.5-acre tract.³

Testimony also showed that around 1935, the family began operating on the tracts using "caretakers" or "trustees." Clephus Lyons, James Robison, and Billy Lyons are among the alleged "caretakers" or "trustees." Nevertheless, no written trust or caretaking agreement has been located. However, Billy Lyons, the most recent "caretaker" or "trustee," testified that he has maintained the tracts for the family since 1985.

In any event, in 1941, Phillips Petroleum Company ("Phillips") began to acquire a series of leases covering the land at issue. In these leases, Phillips refers to the tracts as being owned by Priscilla Foster, Henry Foster, Tom Hill, and Mattie Carter. Additionally, appellees presented royalty deeds from various members of the family of Priscilla Foster granted in favor of Roy Nunn. In each of these deeds, the tracts of land are referenced as being owned by the family of Priscilla Foster.

*2 Capps, on the other hand, has a different version of the facts. Capps notes that in 2010, the 85th District Court in Brazos County awarded title to the 285.5-acre tract, including the tracts at issue here, to Rajena and Buetta Scott. Capps asserts that Rajena and Buetta are heirs of



Alex Scott, one of the original “trustees” who received the property in 1875. After the 2010 judgment was entered, Buetta conveyed her interest in the property to Rajena, who, in turn, conveyed title to Capps.

Thereafter, Capps filed suit to remove four clouds on the title that he received from Rajena—namely, the purported deeds corresponding with the Priscilla Foster, Henry Foster, Tom Hill, and Mattie Carter tracts. Throughout trial, Capps maintained that he is the record title owner of the tracts, and therefore, appellees did not have a claim to the property. In their live answer, appellees generally denied Capps’s allegations and asserted the affirmative defenses of adverse possession, title by lost grant, and the “ancient boundary rule.” Appellees also asserted a cross-claim to remove the cloud created by Capps’s deed under the same affirmative defenses.

At trial, numerous witnesses testified about the deed history of the land and to appellees’ usage of the land over the years. At the conclusion of the evidence, the trial court awarded the disputed tracts to appellees. For the Priscilla Foster, Henry Foster, and Tom Hill tracts, the trial court did not proffer a reason for vesting title in appellees. However, for the Mattie Carter tract, the trial court included the following in its judgment: “The deed offered by Plaintiff into Mattie Carter is void but that is trumped by the Defendants’ adverse possession of the tract.” The trial court assessed costs of court against appellees “because they let their title get into a state of disrepair.” Capps filed various post-judgment motions, including a motion for new trial that was denied on April 28, 2014. Thereafter, both Capps and appellees filed notices of appeal.⁴

II. JUDGMENTS OF COURTS OF EQUAL JURISDICTION

*3 In his first issue, Capps argues that the judgment in this case is void because it purports to alter the 2010 judgment of another court of equal jurisdiction.

A review of the 2010 judgment shows that Buetta and Rajena successfully sued the known and unknown heirs of Alex Scott for title to the 285.5-acre tract. However, Capps has not claimed that every appellee in this case is a known or unknown heir of Alex Scott. Therefore, not all of the appellees were parties to that judgment.

And as such, not all of the appellees are bound by the 2010 judgment. *See In re* 981 S.W.2d 72, 80 (Tex. App.—San Antonio 1998, no pet.) (“A judicial declaration is generally not binding on persons who are not parties to the proceeding or who, although named as parties, did not receive notice of the proceeding.”) (citing *Avila v. St. Luke’s Lutheran Hosp.*, 948 S.W.2d 841, 847 (Tex.App.—San Antonio 1997, pet. denied)); *see also Charvis v. Charvis*, 529 S.W.2d 814, 815 (Tex.Civ.App.—Tyler 1975, no writ) (noting that a judgment “is not binding upon strangers” (citing *Kirby Lumber Corp. v. S. Lumber Co.*, 145 Tex. 151, 196 S.W.2d 387, 388–89 (1946))). Accordingly, contrary to Capps’s assertion, we cannot say that the trial court’s judgment in this case is void under the principles of comity. *But see Pursley v. Ussery*, 937 S.W.2d 566, 568 (Tex.App.—San Antonio 1996, no writ) (“Under the principles of comity, a court should not be permitted to interfere with the final judgment of another court of equal jurisdiction.”).

Moreover, even assuming that some of the appellees are bound by the 2010 judgment, Capps’s litigation strategy would not necessitate a reversal of the trial court’s judgment in this case. Prior to trial, appellees filed special exceptions to Capps’s pleadings,

because they do not place the Defendants on notice as to which of the various tracts of land the Plaintiff claims to be attempting to divest title from a specific Defendant. The global nature of the Plaintiff’s pleading makes it impractical or even impossible to properly defend against the Plaintiff’s claim that he is entitled to legal relief divesting ownership of land from a specific owner.

When presented to the trial court, rather than re-pleading, Capps alleged that he,

owns 100 percent fee title to the property. Same is confirmed by title reports, University Title, Brazos County Abstract. I go on to say in every paragraph we own 100 percent.

...

And this was—I did, as soon as he filed special exception, I said, okay, if you can’t understand what

we're doing by what I have already, let me replead it so you can. So I had 100 percent in everything.

Based on his allegation, if Capps's proof failed as to any defendant, then Capps's proof failed as to all defendants on the tracts in question. Therefore, because he alleged that he owned "100 percent in everything," and because he elected to broadly and generally claim ownership to the entire 285.5-acre tract, Capps risked the loss of his claim because of the way he pleaded and offered proof. See *Dumes v. Strong*, 659 S.W.2d 127, 129 (Tex.App.—Houston [14th Dist.] 1983, no writ) ("As a general rule, a plaintiff who specially pleads his title is restricted in his proof to evidence of the title thus pleaded. He may not introduce proof of any other title. The theory behind this rule is that by pleading one title the party impliedly admits that he claims under the title so pleaded, and under no other." (quoting 56 TEX. JUR. 2d *Trespass To Try Title* § 111 (1964))). Indeed, as we show later, Capps loses his claim as to all defendants because we conclude that the trial court's determination that appellees acquired title to the land by adverse possession is supported by legally and factually sufficient evidence. We therefore overrule Capps's first issue.

III. CAPPS'S REMAINING CLAIMS

*4 In his second, third, and fourth issues, Capps asserts various arguments for why he believes the trial court erred in granting appellees limitations title to the disputed land.

A. Findings of Fact and Conclusions of Law

Here, the trial court did not enter any findings of fact or conclusions of law.⁵ Thus, Capps has not challenged any particular finding made by the trial court and, instead, complains generally about the trial court's judgment.

When a party appeals from a nonjury trial, it must complain of specific findings and conclusions of the trial court, because a general complaint against the trial court's judgment does not present a justiciable question. *Fiduciary Mort. Co. v. City Nat'l Bank*, 762 S.W.2d 196, 204 (Tex.App.—Dallas 1988, writ denied). Accordingly, findings of fact and conclusions of law are mandatory for a party to file to avoid the onerous presumptions that apply in an appeal from a nonjury trial. When an appellant does not request or file findings and conclusions by the trial court, the appellate

court presumes the trial court found all fact questions in support of its judgment, and the reviewing court must affirm that judgment on any legal theory finding support in the pleadings and evidence. *Point Lookout West, Inc. v. Whorton*, 742 S.W.2d 277, 278 (Tex.1987).

If the appellant does not challenge the trial court's findings of fact, when filed, these facts are binding upon both the party and the appellate court. *Wade v. Anderson*, 602 S.W.2d 347, 349 (Tex.Civ.App.—Beaumont 1980, writ ref'd n.r.e.). Accordingly, it is incumbent for the appellant to attack the findings by the appropriate legal and factual sufficiency points of error. *Lovejoy v. Lillie*, 569 S.W.2d 501, 504 (Tex.Civ.App.—Tyler 1978, writ ref'd n.r.e.). In an appeal of a nonjury trial, findings are specifically and meaningfully tied to appropriate standards of appellate review and are therefore truly beneficial to appellate review. See *Chrysler Corp. v. Blackmon*, 841 S.W.2d 844, 853 (Tex.1992).

Apodaca v. Rios, 163 S.W.3d 297, 303 (Tex.App.—El Paso 2005, no pet.). Therefore, because he only generally complains about the trial court's judgment, Capps has not presented a justiciable question. See *id.* (citing *Fiduciary Mort. Co.*, 762 S.W.2d at 204). As such, we presume that the trial court found all fact questions in support of its judgment and will affirm the trial court's judgment on any legal theory that finds support in the pleadings and evidence. See *Apodaca*, 163 S.W.3d at 303 (citing *Whorton*, 742 S.W.2d at 278).

B. Adverse Possession

Given that we are to presume that the trial court found all fact questions in support of its judgment and that the trial court's judgment can be affirmed on any legal theory that finds support in the pleadings and evidence, we will address the issue of adversepossession in turn.⁶

1. Applicable Law

*5 Adverse possession is "an actual and visible appropriation of real property, commenced and continued under a claim of right that is inconsistent with and is hostile to the claim of another person" throughout the statutory period. TEX. CIV. PRAC. & REM. CODE ANN. § 16.021(1) (West 2002). The statute requires that such possession be "inconsistent with" and "hostile to" the claims of all others. *Tran v. Macha*, 213 S.W.3d 913,

914 (Tex.2006); see *Rhodes v. Cahill*, 802 S.W.2d 643, 645 (Tex.1990) (noting that “possession must be of such character as to indicate *unmistakably* an assertion of a claim of exclusive ownership in the occupant” (emphasis in original)). As the Texas Supreme Court mentioned in *Macha*,

hostile use does not require an intention to dispossess the rightful owner, or even know that there is one. But there must be an intention to claim the property as one's own to the exclusion of all others; [m]ere occupancy of land without any intention to appropriate it will not support the statute of limitations.

213 S.W.3d at 915 (internal citations and quotations omitted); see *Bernal v. Chavez*, 198 S.W.3d 15, 19 (Tex.App.—El Paso 2006, no pet.).

2. Discussion

Here, Capps filed a trespass-to-try-title suit, seeking to remove clouds on the title to the land in question. A trespass-to-try-title action is a procedure by which rival claims to title or right of possession may be adjudicated. *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 755 (Tex.2003). To recover in a trespass-to-try-title action, the plaintiff is required to prevail on the superiority of his own title, not on the weakness of the defendant's title. *Rogers v. Ricane Enters., Inc.*, 884 S.W.2d 763, 768 (Tex.1994). The plaintiff may recover (1) by proving a regular chain of conveyances from the sovereign, (2) by establishing superior title out of a common source, (3) by proving title by limitations, or (4) by proving title by prior possession coupled with proof that possession was not abandoned. *Id.* To prove a prima facie case of common source, the plaintiff must connect his title and the defendant's title through complete chains of title to the common source and then show that his title is superior to the one that the defendant derived from the common source. *Id.*

In his trespass-to-try-title action, Capps claimed record title from a deed dating back to 1875. Appellees responded to Capps's claims by asserting the affirmative defense of adverse possession and filing a cross-claim claiming adverse possession, among other things. In other words, Capps argued that his chain of title is superior to appellees'

claim of ownership to the land under adverse possession. Like the trial court, we disagree with Capps.

Despite Capps's assertion in his original petition that his chain of title dated back to 1875, June Van Etten, the vice president and supervisor of the abstract department of Brazos County Abstract Company, testified that there were no further deeds on which appellant could base his claims. In fact, until 2010, there was not any action taken by a “record title” holder to recover possession of the land in question. During this time, the evidence shows that appellees and their predecessors used and enjoyed the land, including using the land for farming, living, raising livestock, building and stocking lakes, and making other improvements.

Billy Joe Lyons testified that he had personal knowledge that appellees had been using the land in question since he was “about 10 or 11.” When asked how old he was at trial, Billy noted that he was sixty-two. Therefore, Billy's testimony established that appellees had been using the land for at least fifty years. Additionally, Billy stated that he had been using the land for appellees since 1985 or 1986 and that appellees have been paying taxes on the land since 1985—testimony that is supported by numerous tax receipts issued by the Brazos County tax assessor.⁷ See *Mem'l Park Med. Ctr., Inc. v. River Bend Dev. Group, L.P.*, 264 S.W.3d 810, 818 (Tex.App.—Eastland 2008, no pet.) (noting that the consecutive payment of taxes on the land supports a claim for adverse possession); *Holusek v. Janek*, 244 S.W. 285, 286 (Tex.Civ.App.—Dallas 1922, no writ) (stating that the payment of taxes may be established “by receipt issued by tax collector, the record of taxes collected kept in the office of the tax collector, or by direct or circumstantial evidence” and that the payment need not “be established by any particular form of evidence to an absolute certainty, but only to a reasonable certainty like any other ordinary fact in dispute and required to be established in the course of a judicial investigation”); see also *McDonough v. Jefferson County*, 79 Tex. 535, 15 S.W. 490, 491 (1891) (“There was not error committed in permitting the payment of taxes to be proved by oral evidence over the objection that the tax receipts or record evidence should be produced, nor over the objection that the evidence was general and did not show the amount paid for any particular year.”).

*6 Billy recalled that his Uncle James Robison was in charge of the land on behalf of appellees for the prior

twenty-seven years and that his grandfather, Clephus Lyons, was the caretaker for “about 25 years” before James. In other words, at the time of trial, appellees established that their “caretakers” had used the land for a consecutive period of approximately eighty years. Billy further mentioned that Clephus’s mother lived in a house on the property before Billy was born in 1951. Billy also recounted that he was born and raised in Clephus’s home and that Clephus farmed the property on his own and for his mother. Billy noted that the “caretaking” done on behalf of appellees was a task that was passed down from family member to family member.

Other testimony showed that appellees’ caretakers raised cattle, horses, and hay since the 1980s and that Clephus was farming the land in the 1940s and 1950s. *See McDonnold v. Weinacht*, 465 S.W.2d 136, 145 (Tex.1971) (stating that a showing of grazing and a sufficient enclosure will support an adverse-possession claim); *see also Baughn v. Capps*, No. 10-09-00111-CV, 2010 Tex.App. LEXIS 1580, at *15, 2010 WL 730369 (Tex.App.—Waco Mar. 3, 2010, no pet.) (mem.op.). In particular, the land was used for the farming of corn and watermelons and the cultivation of hay. *See De Alonzo v. Solis*, 709 S.W.2d 690, 693 (Tex.App.—San Antonio 1988, writ ref’d n.r.e.) (concluding that appellees established adverse possession “by showing that they farmed the land” and noting that cultivating the land continuously over a ten-year period is generally sufficient to establish open, notorious, and hostile possession); *Doyle v. Ellis*, 549 S.W.2d 62, 64 (Tex.Civ.App.—Waco 1977, no writ); *Wiggins v. Houston Oil Co.*, 203 S.W.2d 252, 256 (Tex.App.—Beaumont 1947, writ ref’d n.r.e.) (holding that the claimant took sufficient adverse possession by annually cultivating the 160 acres with corn, cotton, sweet potatoes, and peas, even though the land was only partially fenced and the claimant did not reside there). Billy also testified that he has built a “corral, two-and-quarter-inch oil field pipe corral catch-pen for cattle” and that he has a “930K tractor” on the land in question. *See Anderton v. Lane*, 439 S.W.3d 514, 518 (Tex.App.—El Paso 2014, pet. denied) (“Under Texas law, use of land for grazing cattle, fails to establish adverse possession as a matter of law, unless the fence used is a ‘designed enclosure’ as opposed to ‘casual fences.’” (citing *Rhodes*, 802 S.W.2d at 646; *McDonnold*, 465 S.W.2d at 141-43)).

Moreover, Billy stated that he and his brother made improvements to the land, including digging tanks for

cattle and lakes for fish that were stocked with special fish for family use. Billy also noted that he uses a 10-foot brush hog, a 16-foot deep disk, and another cutter to maintain the property and that he has built and maintained family fences and fences with adjoining landowners. *See Kinder Morgan N. Tex. Pipeline, L.P. v. Justiss*, 202 S.W.3d 427, 439-40 (Tex.App.—Texarkana 2006, no pet.) (“The fencing of land has long been recognized as visible appropriation.” (citing *Stafford v. Jackson*, 687 S.W.2d 784, 787 (Tex.App.—Houston [14th Dist.] no writ); *Mixon v. Clark*, 518 S.W.2d 402, 406 (Tex.Civ.App.—Tyler 1974, writ ref’d n.r.e.); *Peveto v. Herring*, 198 S.W.2d 921, 928 (Tex.Civ.App.—Beaumont 1946, no writ))); *see also Shouse v. Roberts*, 737 S.W.2d 354, 357 (Tex.App.—Houston [14th Dist.] 1987, writ ref’d n.r.e.).

Armatha Ross, who was ninety-three years old at the time of trial, stated that she would go out to the land in question when she was eight or nine years old to visit her grandmother, Nicie Foster Hill, who lived on the property. *See Tex-Wis Co. v. Johnson*, 525 S.W.2d 232, 235 (Tex.App.—Waco 1975), *aff’d*, 534 S.W.2d 895 (Tex.1976) (concluding that plaintiffs established possession of two tracts of land by showing that the family lived on and farmed the land while raising livestock from 1934 to 1964 and that the property was enclosed by fences). Ross recalled that her family farmed the land for cotton, corn, and watermelons and that they had “horses and the mules out there.” Ross also noted that the family had family reunions and gatherings on the land most years.

*7 Phillip Wayne Johnson, who was fifty-five at the time of trial, testified that Priscilla Foster is his great, great grandmother and that he was first introduced to the land at the first family reunion in 1963. Phillip also asserted that his grandmother was “born on this land in 1912.” Phillip recounted the following story told about his grandmother’s birthplace: “She was born in this house right over here. We had horses and cows over here. Not only that, we had a house over here with a shed in the back of it as well, but the shed is gone.” *See Tex-Wis Co.*, 525 S.W.2d at 235.

The testimony above shows that appellees and their caretakers have actually, exclusively, continuously, visibly, and notoriously possessed the land in question for a period of at least eighty years.⁸ *See Justiss*, 202

S.W.3d at 438 (citing *W.T. Carter & Bro. v. Holmes*, 131 Tex. 365, 113 S.W.2d 1225, 1226 (1938)). We hold that the evidence is legally and factually sufficient to support the trial court's finding that appellees adversely possessed the land in question as to all other potential owners. See TEX. CIV. PRAC. & REM. CODE ANN. § 16.030 (West 2002); *Justiss*, 202 S.W.3d at 438; *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex.2005) (stating that, under legal-sufficiency review, we ask “whether the evidence at trial would enable reasonable and fair-minded people to reach the verdict under review” and credit favorable evidence if reasonable jurors could, and disregard contrary evidence unless reasonable jurors could not); *Checker Bag Co. v. Washington*, 27 S.W.3d 625, 633 (Tex.App.—Waco 2000, pet. denied) (noting that, under factsufficiency review, we “consider and weigh all of the evidence” and reverse only if the verdict is “so contrary to the overwhelming weight of the evidence that the verdict is clearly wrong and unjust”); see also *Baughn*, 2010 Tex.App. LEXIS 1580, at *21, 2010 WL 730369. We overrule Capps's second, third, and fourth issues.

IV. APPELLEES' CROSS-APPEAL

In one issue in their cross-appeal, appellees contend that the trial court abused its discretion in taxing court costs against them.⁹

A. Applicable Law

“We review a trial court's award of costs under an abuse of discretion standard.” *Mitchell v. Bank of Am., N.A.*, 156 S.W.3d 622, 630 (Tex.App.—Dallas 2004, pet. denied) (citing *Hasty Inc. v. Inwood Buckhorn J.V.*, 908 S.W.2d 494, 502 (Tex.App.—Dallas 1995, writ denied)). A trial court abuses its discretion when it acts without regard to any guiding rules or principles. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex.1985).

B. Discussion

*8 Texas Rule of Civil Procedure 131 provides that a “successful party to a suit shall recover of his adversary all costs incurred therein, except where otherwise provided.” TEX.R. CIV. P. 131. However, the trial “court may, for good cause, to be stated on the record, adjudge the costs otherwise than as provided by law or these rules.” *Id.* at R. 141; see *Furr's Supermarkets, Inc. v. Bethune*, 53 S.W.3d

375, 376 (Tex.2001). With respect to taxing costs under Rule 141, the Texas Supreme Court has stated:

Taxing costs against a successful party in the trial court, therefore, generally contravenes Rule 131. Yet the trial court's ruling on costs under Rule 141 is permitted within its sound discretion, although that discretion is not unlimited.

Rule 141 has two requirements—that there be good cause and that it be stated on the record. “Good cause” is an elusive concept that varies from case to case. Typically though, “good cause” has meant that the prevailing party unnecessarily prolonged the proceedings, unreasonably increased costs, or otherwise did something that should be penalized.

....

Rule 131's underlying purpose is to ensure that the prevailing party is freed of the burden of court costs and that the losing party pays those costs.... Rather, Rule 141's good cause exception to the mandate of Rule 131 is designed to account for a prevailing party's questionable conduct that occurs during litigation, permitting the trial judge some discretion to reassess costs so that the cost attendant to that conduct is not visited on an innocent, but losing party.

Furr's Supermarkets, Inc., 53 S.W.3d at 376–78.

Here, despite the fact that appellees were clearly the prevailing party, the trial court taxed costs against appellees “because they let their title get into a state of disrepair.” First, the trial court does not point to any action taken by appellees during litigation that was questionable. See *id.* Furthermore, the record does not reflect a finding by the trial court that appellees unnecessarily prolonged the proceedings, unreasonably increased costs, or otherwise did something during trial that should be penalized. See *id.*; see also *Roberts v. Williamson*, 111 S.W.3d 113, 124 (Tex.2003) (“Grounds of perceived fairness, without more, are insufficient to constitute good cause.”); but see *Rogers v. Walmart Stores, Inc.*, 686 S.W.2d 599, 601 (Tex.1985) (affirming the taxation of costs against a prevailing party based on the trial court's finding that the party's trial strategy unnecessarily prolonged the trial); *Tex. Dep't of Transp. v. Pirtle*, 977 S.W.2d 657, 658 (Tex. App.—Fort Worth 1998, pet. denied) (affirming the taxation of costs against the Texas Department of Transportation because it refused to

mediate as ordered and failed to file any objection to the mediation). Any disrepair of appellee's title occurred long before this litigation. Therefore, based on the foregoing, we conclude that the trial court erred in taxing costs against appellees. See TEX.R. CIV. P. 131, 141; *Mitchell*, 156 S.W.3d at 630; see also *Furr's Supermarkets, Inc.*, 53 S.W.3d at 376–78. Accordingly, we sustain appellees' sole issue on cross-appeal.

Because we have concluded that the trial court erred in taxing costs against appellees, and because Texas Rule of Civil Procedure 131 provides that the prevailing party shall recover all costs incurred from the losing party, we reverse the portion of the trial court's judgment taxing costs against appellees and render judgment that all costs shall be taxed against Capps. We affirm the judgment in all other respects.

V. CONCLUSION

All Citations

Not Reported in S.W.3d, 2016 WL 279022

Footnotes

- 1 All motions not expressly ruled upon in this memorandum opinion are dismissed as moot.
- 2 Appellees allege that Constant conveyed the property to Priscilla's aging children "to rectify a wrong."
- 3 In their live answer, appellees claim that: (1) the Priscilla Foster tract contains 25.12 acres; (2) the Henry Foster tract contains 29.3 acres; (3) the Tom Hill tract contains 13.5 acres; and (4) the Mattie Carter tract contains 12.85 acres.
- 4 After filing his notice of appeal, Capps filed a motion to partially dismiss appellees' cross-appeal, arguing that appellees' appellate counsel, W. Stephen Rodgers, seeks to represent non-clients on appeal. The record reflects that Capps sued the known and unknown heirs of Priscilla Foster. At trial, the unknown heirs were represented by an attorney ad litem, Jack W. Dillard, while Rodgers represented the known heirs. The record does not show that Dillard filed a notice of appeal on behalf of the unknown heirs. See *Motor Vehicle Bd. of Tex. v. El Paso Auto. Dealers Ass'n*, 1 S.W.3d 108, 110 (Tex.1999) (stating that only parties of record may appeal a trial court's judgment). However, the Texas Supreme Court has recognized that "a person or entity who was not a named party in the trial court may pursue an appeal in order to vindicate important rights." *Id.* In his response to Capps's motion, Rodgers relies on the virtual-representation doctrine, which allows a litigant to be deemed a party if it will be bound by the judgment, its privity of interest appears from the record, and there is an identity of interest between the litigant and a named party to the judgment. *Id.*; see *BJVSD Bird Family P'ship, L.P. v. Star Electricity, L.L.C.*, 413 S.W.3d 780, 783–84 (Tex.App.—Houston [1st Dist.] 2013, no pet.). Based on our review of the record, we find that the unknown heirs of Priscilla Foster are bound by the trial court's judgment as to ownership of the land; that the privity of interest is apparent from the record; and that the known and unknown heirs of Priscilla Foster have similar interests in the land. Accordingly, we conclude that the virtual-representation doctrine applies in this case, especially given that this case involves important property interests; that the known and unknown heirs are similarly situated with common interests; and that to hold otherwise would leave the unknown heirs unrepresented in this appeal. See *In re Lumbermens Mut. Cas. Co.*, 184 S.W.3d 718, 725 (Tex.2006) ("Virtual representation is best understood as an equitable theory rather than as a crisp rule with sharp corners and clear factual predicates ... such that a party's status as a virtual representative of a nonparty must be determined on a case-by-case basis." (quoting *Gonzalez v. Banco Cent. Corp.*, 27 F.3d 751, 761 (1st Cir.1994))); *City of San Benito v. Rio Grande Valley Gas Co.*, 109 S.W.3d 750, 754 (Tex.2003) (noting that one who has been virtually represented may be entitled to invoke the right of participation as a named party after the judgment has been rendered because "to hold otherwise would deprive [parties who will be bound by a judgment] of the power to preserve their own interests"). This conclusion comports with the Texas Supreme Court's pronouncement that "our procedural rules favor the resolution of cases based upon substantive principles." *In re Lumbermens Mut. Cas. Co.*, 184 S.W.3d at 728 (citing Tex.R. Civ. P. 1; *Verburg v. Dornier*, 959 S.W.2d 615, 616–17 (1997) (disfavoring disposition of appeals based upon harmless procedural defects)). Therefore, based on the foregoing, we deny Capps's partial motion to dismiss appellees' cross-appeal.
- 5 The record reflects that Capps requested that the trial court enter findings of fact and conclusions of law and that Capps also filed a notice of past-due findings. However, Capps took no further action to obtain the findings and conclusions.
- 6 Appellees argue on appeal that the trial court's judgment could have been affirmed on their other affirmative defenses—namely, based on the doctrine of presumed lost deed or grant. However, we note that Texas courts have treated the doctrine of presumed lost deed or grant as the "common law form of adverse possession." See *Fair v. Arp Club Lake, Inc.*, 437 S.W.3d 619, 626 (Tex.App.—Tyler 2014, no pet.). ("The doctrine of presumed lost deed or grant, which is also

referred to as title by circumstantial evidence, has been described as a common law form of adverse possession.”) (citing *Conley v. Comstock Oil & Gas LP*, 356 S.W.3d 755, 765 (Tex.App.—Beaumont 2011, no pet.); *see also Haby v. Howard*, 757 S.W.2d 34, 39 (Tex.App.—San Antonio 1988, writ denied); *Miller-Vidor Lumber Co. v. Schreiber*, 298 S.W. 154, 161 (Tex.Civ.App.—Beaumont 1927, writ ref’d). Accordingly, we will address the issue of adverse possession instead.

- 7 The receipts indicate that the Brazos County tax assessor lists some of the appellees as owners of the land in question. Additionally, on appeal, Capps has proffered additional evidence regarding the taxes on the property that was not considered by the trial court. Because this evidence was not included in the appellate record, we will not consider it in this appeal. *See Gonzalez v. Villarreal*, 251 S.W.3d 763, 777 n.17 (Tex.App.—Corpus Christi 2008, pet. dismissed w.o.j.) (holding that attachment of documents as exhibits or appendices to appellate briefs is not formal inclusion in the appellate record); *see also Till v. Thomas*, 10 S.W.3d 730, 733–34 (Tex.App.—Houston [1st Dist.] 1999, no pet.) (“We cannot consider documents attached to an appellate brief that do not appear in the record.”).
- 8 On appeal, Capps argues that appellees’ use of the land was permissive because they used caretakers. Exclusive possession of the land is required to support an adverse-possession claim; the adverse-possession claimant must wholly exclude the owner of the property. *Turner v. Mullins*, 162 S.W.3d 356, 367 (Tex.App.—Fort Worth 2005, no pet.). Joint or common possession by the adverse possession claimant and the owner defeats the requisite quality of exclusiveness. *Id.* The record does not reflect that Capps, the person who purports to own the land, permitted appellees to use the land, which would therefore defeat the exclusiveness factor. *See id.* Furthermore, we emphasize that Capps alleged at trial that he owns “100 percent of everything” and that he filed a trespass-to-try-title suit, asserting that his claim to the land is superior to all others. Thus, the trial court was tasked with deciding whether appellees or Capps had superior title to the land, not whether appellees’ caretakers had superior title. As such, we are not persuaded by Capps’s argument.
- 9 On June 3, 2014, appellees filed an explanation for the filing of their notice of cross-appeal more than ninety days after judgment or alternatively a motion for extension of time to file their notice of crossappeal. After reviewing the filing, we grant appellees’ motion and consider their cross-appeal to have been timely filed.



TENTH COURT OF APPEALS

Chief Justice

Tom Gray

McLennan County Courthouse
501 Washington Avenue, Rm 415
Waco, Texas 76701-1373

Phone: (254) 757-5200

Fax: (254) 757-2822

Clerk

Sharri Roessler

Justice

Rex D. Davis

Al Scoggins

January 21, 2016

In accordance with the enclosed Memorandum Opinion, below is the judgment in the numbered cause set out herein to be entered in the Minutes of this Court as of the 21st day of January, 2016.

10-14-00061-CV CURTIS CAPPS v. THE KNOWN AND UNKNOWN HEIRS OF
PRISCILLA FOSTER, ET AL - ON APPEAL FROM THE 272ND
DISTRICT COURT OF BRAZOS COUNTY - TRIAL COURT NO. 12-
001362-CV-272 – AFFIRMED IN PART, REVERSED AND RENDERED
IN PART - Memorandum Opinion by Justice Scoggins:

“This cause came on to be heard on the transcript of the record of the court below and because the Court concludes that the trial court’s judgment in favor of appellees is supported by legally and factually sufficient evidence, and because we cannot say that the trial court’s judgment is void under the principles of comity, we affirm that portion of the judgment regarding title to the land in question. The Court further finds that the trial court erred in taxing costs against appellees and reverses the portion of the trial court’s judgment taxing costs against appellees and renders judgment that all costs shall be taxed against appellant Curtis Capps. It is further ordered that the trial court’s judgment be affirmed in all other respects and that this decision be certified below for observance.”



TENTH COURT OF APPEALS

Chief Justice

Tom Gray

Justice

Rex D. Davis

Al Scoggins

McLennan County Courthouse

501 Washington Avenue, Rm 415

Waco, Texas 76701-1373

Phone: (254) 757-5200

Fax: (254) 757-2822

Clerk

Sharri Roessler

January 21, 2016

In accordance with the enclosed Memorandum Opinion, below is the judgment in the numbered cause set out herein to be entered in the Minutes of this Court as of the 21st day of January, 2016.

10-14-00061-CV CURTIS CAPPS v. THE KNOWN AND UNKNOWN HEIRS OF PRISCILLA FOSTER, ET AL - ON APPEAL FROM THE 272ND DISTRICT COURT OF BRAZOS COUNTY - TRIAL COURT NO. 12-001362-CV-272 – AFFIRMED IN PART, REVERSED AND RENDERED IN PART - Memorandum Opinion by Justice Scoggins:

“This cause came on to be heard on the transcript of the record of the court below and because the Court concludes that the trial court’s judgment in favor of appellees is supported by legally and factually sufficient evidence, and because we cannot say that the trial court’s judgment is void under the principles of comity, we affirm that portion of the judgment regarding title to the land in question. The Court further finds that the trial court erred in taxing costs against appellees and reverses the portion of the trial court’s judgment taxing costs against appellees and renders judgment that all costs shall be taxed against appellant Curtis Capps. It is further ordered that the trial court’s judgment be affirmed in all other respects and that this decision be certified below for observance.”



TENTH COURT OF APPEALS

Chief Justice
Tom Gray

McLennan County Courthouse
501 Washington Avenue, Rm. 415
Waco, Texas 76701-1373

Clerk
Sharri Roessler

Justices
Rex D. Davis
Al Scoggins

Phone: (254) 757-5200 Fax: (254) 757-2822

August 22, 2016

Daniel P. Meanor
Karl C. Hoppess & Assoc., P.c
1301 McKinney St Ste 3550
Houston, TX 77010-3034
* DELIVERED VIA E-MAIL *

Karl C. Hoppess
Karl C. Hoppess & Associates, P.C.
8200 Wednesbury, Suite 420
Houston, TX 77074
* DELIVERED VIA E-MAIL *

Bill Youngkin
Youngkin & Associates, PLLC
P.O. Box 4806
Bryan, TX 77805
* DELIVERED VIA E-MAIL *

Jay B. Goss
Bruchez Goss Thornton Meronoff & Hawthorne, PC
4343 Carter Creek Parkway, Suite 100
Bryan, TX 77802
* DELIVERED VIA E-MAIL *

W. Stephen Rodgers
Rodgers Miller & Rodriguez, P.C.
P.O. Box 4884
4444 Carter Creek Pkwy, Suite 208
Bryan, TX 77805-4884
* DELIVERED VIA E-MAIL *

RE: Court of Appeals Number: 10-14-00061-CV
Trial Court Case Number: 12-001362-CV-272

STYLE: Curtis Capps
v.
The Known and Unknown Heirs of Priscilla Foster, et al

Pursuant to Rule 18 of the Texas Rules of Appellate Procedure, this Court has this day issued a Mandate in accordance with the judgment and delivered it to the clerk of the trial court. A copy of the mandate is enclosed. The parties are advised that, unless withdrawn, exhibits, if any, submitted directly to the Court by a party or the party's attorney of record and now on file with the Court will be destroyed, without further notice, after the expiration of 30 days. *See* TEX. GOV'T CODE ANN. § 51.204.

As ordered by the Court.

*Note: The exhibits referred to in this letter are those that are originally submitted to the Court of Appeals by a party, not those originally filed in the trial court.

SHARRI ROESSLER, CLERK

By:

Kim Wernet, Deputy Clerk

CC: Jack W. Dillard (DELIVERED VIA E-MAIL)
Hon. Marc Hamlin (DELIVERED VIA E-MAIL)

MANDATE

THE STATE OF TEXAS

TO THE 272ND DISTRICT COURT OF BRAZOS, COUNTY GREETING:

Before our Court of Appeals on the 22nd day of August A.D. 2016, the cause upon appeal to revise or reverse the judgment between

CURTIS CAPPS, Appellant(s)

Trial Court No. 12-001362-CV-272
Court of Appeals No. 10-14-00061-CV

Appellee(s) THE KNOWN AND UNKNOWN HEIRS OF PRISCILLA FOSTER, ET AL,

was determined; and therein our said Court of Appeals made its order in these words:

This cause came on to be heard on the transcript of the record of the court below and because the Court concludes that the trial court's judgment in favor of appellees is supported by legally and factually sufficient evidence, and because we cannot say that the trial court's judgment is void under the principles of comity, we affirm that portion of the judgment regarding title to the land in question. The Court further finds that the trial court erred in taxing costs against appellees and reverses the portion of the trial court's judgment taxing costs against appellees and renders judgment that all costs shall be taxed against appellant Curtis Capps. It is further ordered that the trial court's judgment be affirmed in all other respects and that this decision be certified below for observance.

WHEREFORE WE COMMAND YOU to observe the order of our said Court of Appeals in this behalf, and in all things to have it duly recognized, obeyed and executed.



WITNESS the Hon. TOM GRAY, Chief Justice of our said Court of Appeals for the Tenth District of Texas, with the seal thereof annexed, at the City of Waco, the 22nd day of August A.D. 2016.

SHARRI ROESSLER, CLERK

By: Kim Wernet
Kim Wernet, Deputy Clerk



BILL OF COSTS

TEXAS COURT OF APPEALS, TENTH DISTRICT, AT WACO

No. 10-14-00061-CV

Curtis Capps

v.

The Known and Unknown Heirs of Priscilla Foster, et al

(No. 12-001362-CV-272 IN 272ND DISTRICT COURT OF BRAZOS COUNTY)

Type of Fee	Charges	Paid	By
MOTION FEE	\$10.00	E-PAID	HOPPESS
MOTION FEE	\$10.00	E-PAID	JACKIE GROVES
MOTION FEE	\$10.00	E-PAID	BILL YOUNGKIN
MOTION FEE	\$10.00	E-PAID	JACKIE GROVES
MOTION FEE	\$10.00	E-PAID	JACKIE GROVES
CLERK'S RECORD	\$0.00	UNKNOWN	UNKNOWN
MOTION FEE	\$10.00	E-PAID	RODGERS
REQUIRED TEXAS.GOV EFILING FEE	\$20.00	PAID	RODGERS
INDIGENT	\$25.00	PAID	RODGERS
FILING	\$100.00	PAID	RODGERS
SUPREME COURT CHAPTER 51 FEE	\$50.00	PAID	RODGERS
REPORTER'S RECORD	\$835.00	UNKNOWN	UNKNOWN
INDIGENT	\$25.00	PAID	YOUNGKIN
REQUIRED TEXAS.GOV EFILING FEE	\$20.00	PAID	YOUNGKIN
FILING	\$100.00	PAID	YOUNGKIN
SUPREME COURT CHAPTER 51 FEE	\$50.00	PAID	YOUNGKIN

Balance of costs owing to the Tenth Court of Appeals, Waco, Texas: 0.00

Court costs in this cause shall be paid as per the Judgment issued by this Court.

I, **SHARRI ROESSLER**, CLERK OF THE TENTH COURT OF APPEALS OF THE STATE OF TEXAS, do hereby certify that the above and foregoing is a true and correct copy of the cost bill of THE COURT OF APPEALS FOR THE TENTH DISTRICT OF TEXAS, showing the charges and payments, in the above numbered and styled cause, as the same appears of record in this office.



IN TESTIMONY WHEREOF, witness my hand
and the Seal of the **COURT OF APPEALS** for the
Tenth District of Texas, this August 22, 2016.

SHARRI ROESSLER, CLERK

By: Kim Wernet
Kim Wernet, Deputy Clerk

MY AUTHORIZATION FOR MR. HOPPESS
AND MR. GOSS TO ACT AS MY ATTORNEY

I, hereby confirm that Karl C. Hoppess of Karl C. Hoppess & Associates, P.C., and Jay Goss of Bruchez, Goss, Thorton & Mernoff, P.C. are authorized to prosecute and act on my behalf in Cause No. 13-002483-CV-361, *Samuel Ray Hines, et al. v. Curtis Capps, Buetta Scott and Rajena Scott*.

Signed this 21 day of March, 2017.

Nettie Mae Clay
(Sign Above)
Print Name: Nettie Mae Clay

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

(Sign Above)
Print Name: _____

