

SUMMONS

STATE OF ALABAMA  
BALDWIN COUNTY

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

CASE NO. 11,471

\_\_\_\_\_ TERM, 1971

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETINGS:

You are hereby commanded to summon The Housing Authority of the City of Bay Minette, Baldwin County, Alabama; Prince Griffin, as Executor, Estate of H. M. Parsons, Deceased; Annie P. Moorers; Vada P. Potts; Golda P. Griffin; James G. McCartha; Irma E. McCartha; McGhee Temple Church of God in Christ, Inc., a Corporation; C. H. Gahan, Johnny Taylor, Ida McCall, Bessie Pleasant, Allen Mason and A. T. McGhee, Trustees of McGhee Temple Church of God in Christ, Inc., a Corporation, to appear and plead, answer or demur, within thirty days from the service hereof, to the petition filed in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against The Housing Authority of the City of Bay Minette, Baldwin County, Alabama; Prince Griffin, as Executor, Estate of H. M. Parsons, Deceased; Annie P. Moorers; Vada P. Potts; Golda P. Griffin; James G. McCartha; Irma E. McCartha; McGhee Temple Church of God in Christ, Inc., a Corporation; C. H. Gahan, Johnny Taylor, Ida McCall, Bessie Pleasant, Allen Mason and A. T. McGhee, Trustees of McGhee Temple Church of God in Christ, Inc., a Corporation, Respondents, by Mamie Kelley and Aubrey Smith, Complainants.

WITNESS my hand this 7 day of January, 1971.

Alice J. Hunk REGISTER

MAMIE KELLEY and  
AUBREY SMITH,

Complainants

-VS-

THE HOUSING AUTHORITY OF THE  
CITY OF BAY MINETTE, BALDWIN  
COUNTY, ALABAMA;  
PRINCE GRIFFIN, as Executor,  
Estate of H. M. Parsons, Deceased;  
ANNIE P. MOORER; VADA P. POTTS;  
GOLDA P. GRIFFIN;  
~~NETTIE P. WILLIAMS;~~  
~~MARGARET P. GRIFFIN;~~  
JAMES G. McCARTHA;  
IRMA E. McCARTHA;  
McGHEE TEMPLE CHURCH OF GOD IN  
CHRIST, INC., a Corporation;  
C. H. GAHAN, JOHNNY TAYLOR,  
IDA McCALL, BESSIE PLEASANT,  
ALLEN MASON and A. T. McGHEE,  
Trustees of McGhee Temple Church  
of God in Christ, Inc., a  
Corporation,

Respondents

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

CASE NO. 11,471

PETITION TO SET ASIDE DECREE

TO HONORABLE TELFAIR J. MASHBURN, JUDGE OF SAID COURT:

Comes now your Complainants, Mamie Kelley and Aubrey Smith,  
and shows and represents unto Your Honor as follows:

1. That both of your Complainants are over twenty-one years  
of age; your Complainant Aubrey Smith is a legal resident of  
Baldwin County, Alabama, while your Complainant Mamie Kelley is  
a bona fide resident of Post Office Box 983, Cross City, Florida;  
the Respondents are each of legal age and are bona fide residents  
of the State of Alabama, and the two Respondent corporations are  
both registered to do business in Baldwin County, Alabama; that  
all Respondents have been duly and legally appointed to act in  
the several respective positions as hereinabove named.

2. That on the 15th day of January, 1970, the Respondent  
The Housing Authority of the City of Bay Minette, Baldwin County,  
Alabama, filed in the Probate Court of Baldwin County, Alabama,  
a Petition For Condemnation Of Land and named as condemnees  
therein your Complainants herein, together with all the other  
Respondents in this cause, excepting the said Housing Authority

of the City of Bay Minette, Baldwin County, Alabama. (See copy attached hereto as Exhibit "A".) In the said petition The Housing Authority of the City of Bay Minette, Baldwin County, Alabama, sought to condemn a parcel of land described as follows, to wit:

A parcel of land lying in the North half of Section 21, Township 2 South, Range 3 East, described as follows: Beginning at a point on the North right-of-way line of the New Hurricane Road, which point is 140 feet East of the Southeast corner of Lot 8, Block 1 as shown on a plat of Douglasville, recorded in Map Book 1, page 334, in the Office of the Judge of Probate of Baldwin County, Alabama, from said point of beginning, run thence North 152.20 feet to a point on the South line of the Old Hurricane Road, thence run East along the said South line 177 feet to a point, thence run South 143.47 feet to a point on the North line of New Hurricane Road, thence West along the said North line 177 feet to the point or place of beginning.

3. The above said petition completely failed to describe in any manner that portion of the lands owned by your Complainants included in above described parcel although such information was available to the said condemning authority; instead, it attempted to list all possible claimants to the aforescribed parcel without describing, with particularity, the amount owned by each condemnee and particularly that owned by your Complainants; that on the 15<sup>th</sup> day of January, 1970, Honorable Harry D'Olive, Judge of Probate, Baldwin County, Alabama, issued a Notice to all condemnees named in said petition, including your Complainants herein; that the petition was set down for hearing on January 27, 1970; that the return made on the back side of said notice by the Sheriff of Baldwin County, Alabama, shows your Complainants as having been served a copy of the said petition to condemn above described land, but said return was NOT endorsed as being served on your Complainants; that on 27<sup>th</sup> of January, 1970, Honorable Harry D'Olive, Probate Judge, Baldwin County, Alabama, did enter an order condemning the lands sought to be condemned and appointed three allegedly disinterested citizens to serve as commissioners to assess and appraise the damages and compensation to which the landowners, lienholders, and lessees of said lands were entitled;

that said commissioners were duly and legally qualified, and on the 29<sup>th</sup> of January, 1970, the said three commissioners did issue their report showing the amount of damages to be awarded to the aforescribed parcel of real property to be \$39,925.00; that on the said date Honorable Harry D'Olive, Probate Judge, Baldwin County, Alabama, did issue a Decree Of Condemnation By Probate Court awarding damages to the property owners above named, collectively, in the sum of \$39,925.00 and condemning the aforescribed property "for public use and Neighborhood Development Program Project #A-1" (See copy thereof attached hereto as Exhibit "B".); and that said decree of condemnation was void and of no legal effect because your Complainants' lands were not properly described.

4. That on the 13<sup>th</sup> day of February, 1970, Prince Griffin, as Executor, Estate of H. M. Parsons, Deceased; Annie P. Moorer; Vada P. Potts; Golda P. Griffin; James G. McCartha and Irma McCartha, acting by and through their attorney of record, did file Notice Of Appeal from the aforementioned final order of condemnation to this Honorable Court and demanded a trial by jury (For copy thereof see Exhibit "C".) and on the said date, said Harry D'Olive notified The Housing Authority of the City of Bay Minette, Baldwin County, Alabama, that the appeal had been filed in his office; and on said date said Judge Harry D'Olive further issued an order to the Sheriff of Baldwin County, Alabama, directing him to serve said notice upon The Housing Authority of the City of Bay Minette, Baldwin County, Alabama. (See attached Exhibit "D" for copy of the latter two referenced instruments.)

5. That on the 5<sup>th</sup> day of June, 1970, acting by and through James R. Owen, their attorney, McGhee Temple Church of God in Christ, Inc., a Corporation; C. H. Gahan, Johnny Taylor, Ida McCall, Bessie Pleasant, Allen Mason and A. T. McGhee, Trustees of the McGhee Temple Church of God in Christ, Inc., a Corporation, some of the condemnees in the original condemnation proceeding, filed Notice in this Honorable Court, Civil Case No. 9170, of

joining "in the appeal from the final order of condemnation heretofore made and entered in this cause on, to wit, January 20, 1970". On the same date, Harry J. Wilters, Jr., as attorney for the condemnor, The Housing Authority of the City of Bay Minette, Baldwin County, Alabama, signed an acceptance of service for notice of said appeal "and consents and agrees that the said condemnees join in this appeal".

6. That on 3rd of February, 1970, Honorable Tolbert M. Brantley, attorney for Honorable Wilson Hayes, General Administrator Estate of Lillie C. Bush, Deceased, Probate Court of Baldwin County, Alabama, Case No. 4857, filed a petition in the Probate Court of Baldwin County, Alabama, Case No. 6795, asking said Court to take Judicial Notice of the Claim filed by William M. Hall against said estate in the amount of \$302.00 and that the costs of administration be taxed against the proceeds to be paid into Court by The Housing Authority of the City of Bay Minette, Baldwin County, Alabama, for Aubrey Smith and Mamie Kelley, heirs of the said Lillie C. Bush. On 3rd of February, 1970, the Probate Judge of Baldwin County, Alabama, did enter an order amending the aforementioned Decree of Condemnation whereby the proceeds from the condemnation belonging to your Complainants was subject to the claim of William M. Hall, all of said proceedings being made without the sanction of law.

7. That on the 16th day of June, 1970, those parties above named as defendants, or condemnees, did have a trial by jury before Your Honor for determining the value of their respective interests in the aforementioned parcel of real property described in paragraph 2 above, and the jury on instruction of this Honorable Court (See Exhibit "E" attached.) did return a verdict contrary to law in that its verdict made one award for all condemnees' lands and buildings, to wit, in the amount of \$48,940.00; and it then proceeded to assess separate values for portions of the total parcel condemned, assessing the church for \$41,150.00, a 50-foot lot for \$1,000.00, a Cypress house for

\$800.00 and a three bedroom house and lot for \$3,350.00, said valuations having been made in accordance with this Honorable Court's instruction. (See Exhibit "F" attached hereto for copy of the jury's verdict.)

8. That on the 16<sup>th</sup> day of June, 1970, Your Honor did, in Civil Case No. 9170, enter a Decree condemning your Complainants' property and awarding your Complainants the sum of \$4,230.00 as damages and compensation for their property "less the claim filed by William M. Hall in the Probate Court against the estate of Lillie C. Bush in the amount of \$444.04, to be paid to William M. Hall by the Clerk". And, in said Decree Your Honor further ordered that title to your Complainants' property shall rest in The Housing Authority of the City of Bay Minette, Baldwin County, Alabama, when said Housing Authority pays the assessed damages and compensation into the hands of the Clerk of this Court.

9. Your Complainants make known that they did not take an appeal from the condemnation proceeding instituted against them in the Probate Court of Baldwin County, Alabama; that they had no notice of the appeal taken by the other condemnees in the said Probate Court, and that they did not appear, nor were they represented by counsel in the aforementioned proceedings held in this Honorable Court. And, your Complainants make known that Your Honor did know that they did not participate in the trial of said cause, as shown by the following exert of remarks made just prior to Your Honor charging the jury in the said proceeding - see Exhibit "G" attached hereto for said remarks.

10. Your Complainants make known that they did not know of the aforementioned jury verdict and Decree of this Honorable Court until on or about the 25<sup>th</sup> day of July, 1970, when they inquired to the Probate Court for the money to which they were entitled to; and they make known that neither the Probate Court of Baldwin County, Alabama, nor the condemning authority, to wit, The Housing Authority of the City of Bay Minette, Baldwin County, Alabama, nor anyone else, ever notified them of the void decision made in the said Probate Court.

11. Your Complainants make known unto this Honorable Court that when those property owners who were condemnees in the original Probate Court proceedings, except your Complainants herein, took an appeal from the Probate Court of Baldwin County, Alabama, to this Honorable Court neither the Clerk of this Honorable Court nor the Probate Court of Baldwin County, Alabama, nor the Sheriff of Baldwin County, Alabama, gave notice to your Complainants herein of the appeal to the Circuit Court of Baldwin County, Alabama, and neither of your Complainants had any notice, actual or constructive, concerning the appeal.

12. Your Complainants make known that they are themselves free from fault and were not negligent in suffering the judgment to be rendered against them in the Probate Court of Baldwin County, Alabama, and in suffering the Decree to be rendered against them in the Circuit Court of Baldwin County, Alabama. In this connection your Complainants make known that they did, upon learning that the Decree had been rendered against them in this Honorable Court, obtain the services of an attorney and sought to have that portion of the said Decree affecting them set aside, without avail.

13. All money awarded to your Complainants herein is still held by the Clerk of this Honorable Court; and through the void and illegal action of the Probate Court of Baldwin County, Alabama, and this Honorable Court, they are each being deprived of their property without due process of law.

14. Attached to the original complaint herein is Exhibit "H" which is a copy of the proceedings entitled:

THE HOUSING AUTHORITY OF THE CITY OF BAY MINETTE,  
Plaintiff

VS.

PRINCE GRIFFIN, AS EXECUTOR, ET AL.

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA,

AT LAW NO. 9170

### PRAYER FOR PROCESS

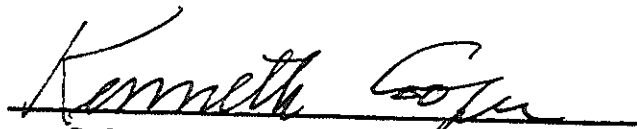
The Premises Considered, your Complainants pray that Your Honor take jurisdiction of this petition, that service of same be had upon the Respondents above named under and according to the rules, laws and statutes made and provided by the State of Alabama, for service upon both residents and nonresidents, and that summons issue to said respondents requiring each of them to plead, answer or demur to this petition within the time required by law, and the rules of this Honorable Court.

### PRAYER FOR RELIEF

Your Complainants pray that upon a final hearing in this cause Your Honor will:

- (a) enter a decree by the terms of which that certain Decree of Condemnation by Probate Court, Baldwin County, Alabama, dated 29th January, 1970, Case No. 6795, and that certain Decree of the Circuit Court of Baldwin County, Alabama, Civil Division, Case No. 9170, dated 16th of June, 1970, both of which purport to condemn lands belonging to your Complainants, be declared null, void and of no legal force and effect; and
- (b) set aside the aforementioned decree finding your Complainants indebted to William M. Hall.

And if your Complainants be mistaken as to the relief for which they herein specifically pray, then they pray for such other, further, additional, alternative and general relief to which they may be entitled under the premises and which in equity and good conscience may seem meet and proper, and your Complainants will ever pray, etc.

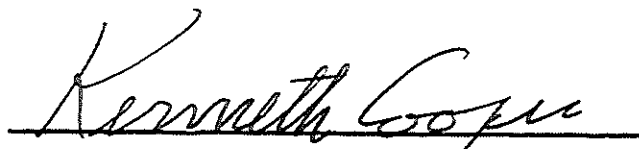
  
Solicitor For Complainants



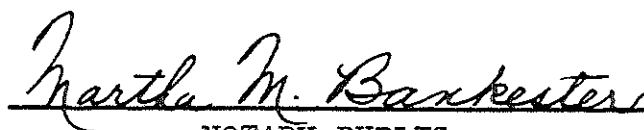
STATE OF ALABAMA

BALDWIN COUNTY

Before me, Martha M. Bankester, Notary Public, State at Large, State of Alabama, personally appeared Kenneth Cooper who is known to me, and who by me being first duly sworn, deposes and says that he is informed of and verily believes the facts alleged in the foregoing petition, and that upon such information and belief he avers that said facts are true and correct.

  
Kenneth Cooper

Sworn to and subscribed before me this 7<sup>th</sup> day of  
January, 1971.

  
NOTARY PUBLIC  
STATE AT LARGE, STATE OF ALABAMA

My Commission Expires:  
October 6, 1974

**FILED**

JAN 7 1971

**ALICE J. DUCK** CLERK  
REGISTER

EXHIBIT "A"

THE HOUSING AUTHORITY OF THE  
CITY OF BAY MINETTE, BALDWIN  
COUNTY, ALABAMA,

Condemnor

vs.

PRINCE GRIFFIN, as Executor of the  
Estate of H. M. Parsons, Dec.;  
ANNIE P. MOORER; VADA P. POTTS;  
GOLDA P. FRIEDHOFF;  
NETTIE P. WILLIAMS;  
MARGARET P. GRIFFIN;  
JAMES G. McCARTHA; IRMA E. McCARTHA;  
McGHEE TEMPLE CHURCH OF GOD IN  
CHRIST, INC., a Corp.; C. H. GAHAN;  
JOHNNY TAYLOR, IDA McCALL,  
BESSIE PLEASANT, ALLEN MASON and  
A. T. McGHEE, Trustees of McGhee  
Temple Church of God in Christ,  
Inc., a Corp.; MAMIE KELLY, and  
AUBREY SMITH,

Condemnees

IN THE PROBATE COURT OF

BALDWIN COUNTY, ALABAMA

CASE NO.

PETITION FOR CONDEMNATION OF LAND

Now comes The Housing Authority of the City of Bay Minette, Baldwin County, Alabama, a body Corporation, as Condemnor and files this its application in the Probate Court of Baldwin County, Alabama, for an Order of Condemnation to acquire and obtain the fee simple title to the lands hereinafter described and as a basis for the relief sought respectfully shows unto the Court as follows:

1. Your Petitioner is a duly constituted Housing Authority, organized, existing and acting under the provisions of Chapter 2 of Title 25, Code of Alabama of 1940, and is authorized thereby and under and by virtue of Act No. 491 of the General Acts of Alabama, 1949, and Chapter 1 of Title 19, Code of Alabama of 1940, and by the Constitution of Alabama to institute and prosecute this proceedings and to acquire the lands hereinafter described for the purposes stated.

2. At a special meeting of The Housing Authority of the City of Bay Minette, Baldwin County, Alabama, duly and regularly held on October 15, 1969, a resolution was duly and legally adopted by the Commissioners of said Authority, finding and determed that the acquisition of the hereinafter described lands, and other lands, is in the public interest, and necessary for public use for the uses and purposes set out in and authorized by Act No. 491 of the General Acts of Alabama of 1949, and by the provisions of Title 42, U.S.C.A. Sections 1401-1435, and 1441-1460 as amended, in connection with the carrying out of an urban renewal or redevelopment project known as the Neighborhood Development Program, Project #A-1 according to a redevelopment plan previously, duly and legally adopted and approved by your Petitioner, and by the governing body of the City of Bay Minette, Baldwin County, Alabama, as required by law; a true and correct copy of said resolution is attached hereto, marked Exhibit "A", with leave herein prayed to refer to the same as often as may be necessary.

Exhibit "A" Continued

3. That the parcel of land necessary for public use and the uses and purposes as set forth herein and is authorized as herein set forth above, which the Petitioner seeks to condemn are set out and described as follows:

A parcel of land lying in the North half of Section 21, Township 2 South, Range 3 East, described as follows: Beginning at a point on the North right-of-way line of the New Hurricane Road, which point is 140 feet East of the Southeast corner of Lot 8, Block 1 as shown on a plat of Douglasville, recorded in Map Book 1, page 334 in the office of the Judge of Probate of Baldwin County, Alabama, from said point of beginning, run thence North 152.20 feet to a point on the South line of the Old Hurricane Road, thence run East along the said South line 177 feet to a point, thence run South 143.47 feet to a point on the North line of New Hurricane Road, thence West along the said North line 177 feet to the point or place of beginning.

4. That Petitioner further shows that diligent search has been made of the records of Baldwin County, Alabama, and diligent inquiry made to ascertain the names, ages and places of residence of the parties owning or claiming some right, title or interest in the said lands, and according to the best of Petitioner's information, knowledge, and belief, the said lands are owned or some right, title or interest is claimed by the persons and parties as are named as Condemnees in this cause, and set forth in Paragraph 3 above, and described herein, and that all of said parties and persons named as owners, lienholders and claimants are over the age of twenty-one years, and are under no legal disabilities unless and except as stated under said separate parcel described herein and that each of said Condemnees own or claim said property, or some right, title or interest therein.

5. That Baldwin County, Alabama, a body corporation under the Laws of the State of Alabama, with its County Seat in the City of Bay Minette, Alabama, may have or claim an interest in said tract by reason of taxes and easements due and chargeable, and is hence made a party hereto.

6. That Petitioner further shows that it has made bona fide efforts to agree with the parties owning or claiming some right, title or interest in each of said tracts of land described in said Paragraph 3 above, described herein, as to the fair and reasonable market value of said property, and compensation to be allowed and paid to them for their interests in said lands to be condemned hereby, and that it has failed to come to any such agreement with all of said parties, or that the title to such tract or parcel of land was such that it could not be acquired by direct purchase, and that your Petitioner has heretofore taken all steps necessary, and all proceedings required by law, necessary to initiate these proceedings.

7. Your Petitioner alleges that it seeks to condemn the fee simple title to said lands hereinabove described by acquiring all the right, title and interest in and to said property hereinabove described now owned by the persons or parties herein made Condemnees, together with any other party or parties herein made Condemnees, together with any other party or parties claiming to hold any right, title or interest therein or to hold any lien against said property hereinabove described for the purpose of carrying out an urban renewal or redevelopment project known as the Neighborhood Development Program, Project #A-1, and which

Exhibit "A" Continued

said lands, when condemned will be devoted to the uses and purposes authorized by the statutes and acts hereinabove described for which purposes your Petitioner has already acquired title or options to purchase other property in the immediate vicinity necessary to complete this project, and that the tracts of land described herein cannot be acquired as set forth above, and that said tracts are necessary to complete this project, and The Housing Authority of the City of Bay Minette, Baldwin County, Alabama, did heretofore, at the meeting held on October 15, 1969, aforesaid adopted a resolution authorizing the acquisition of the tracts referred to above by condemnation proceedings and its Executive Director has instructed and authorized Harry J. Wilters, Jr., as Attorney for the Housing Authority of the City of Bay Minette, Alabama, to institute and prosecute such proceedings for the condemnation of said tracts or any part thereof, included in said project area where said Authority is unable to acquire the same by purchase or for title reasons. A copy of the resolution, properly certified thereto by the Secretary of The Housing Authority of the City of Bay Minette, marked Exhibit "B" and made a part hereof with leave to refer to as often as may be necessary, and your Petitioner acknowledges itself as security for the costs of these proceedings.

THE PREMISES CONSIDERED, Petitioner prays that this Court will make and enter an order appointing a day for the hearing of this Petition, and that the Court give notice to the above Condemnees who are residents of the State of Alabama, by personal service, and to all other Condemnees in such form and manner as is required by law, and that the Court will appoint a guardian ad litem to represent the interest of any minor Condemnees, and that upon a final hearing of this Petition, that this Court will order and enter a decree that the Petitioner is entitled to acquire the fee simple title to the lands herein for the purpose as set forth herein and will appoint Commissioner to ascertain and report the fair and reasonable market value and compensation to be allowed the Condemnees as their interest may appear for such taking and that upon payment into Court of the fair and reasonable market value and compensation for such lands, as assessed by the Commissioners, a judgment or decree be rendered vesting the fee simple title to the said lands free and clear of all liens and encumbrances, in The Housing Authority of the City of Bay Minette, Alabama, a Corporation, and will make and enter in this cause, all such other and further orders and decrees as may be necessary or proper in the premises.

THE HOUSING AUTHORITY OF THE CITY  
OF BAY MINETTE, a Corporation

BY /s/ Harry J. Wilters, Jr.  
Attorney for Condmmor (sic)

STATE OF ALABAMA  
BALDWIN COUNTY

Before me, the undersigned authority, personally appeared Harry J. Wilters, Jr., who being by me first duly sworn deposes and says that he is attorney for the applicant, The Housing Authority of the City of Bay Minette, and has the authority to make this affidavit and to institute and prosecute the foregoing application for the condemnation of the lands, rights and interest therein described; and that he has knowledge of the statements therein contained and that to the best of his knowledge, information and belief, such statements are true and correct as therein alleged.

/s/ Harry J. Wilters, Jr.  
Harry J. Wilters, Jr.

Exhibit "A" Continued

Sworn to and subscribed before me on this the 15<sup>th</sup> day of January, 1970.

/s/ Amelia G. Perkins  
Notary Public, Baldwin County, Ala.

EXTRACTS FROM THE MINUTES OF A SPECIAL  
MEETING OF THE COMMISSIONERS  
OF THE HOUSING AUTHORITY OF THE CITY  
OF BAY MINETTE, ALABAMA  
HELD ON OCTOBER 15, 1969

The Commissioners of The Housing Authority of the City of Bay Minette, Alabama met in Special session at the office of the Authority in the City of Bay Minette, Alabama, at 5:00 o'clock p.m., on October 15, 1969.

The meeting was called to order by the Chairman and, upon roll call, those present and absent were as follows:

Present:	J. H. Faulkner, Chairman	Absent:	None
	Harlan Page		
	W. F. Thomas		
	Emile Nassar		
	Oswald Boykin		

The NOTICE OF SPECIAL MEETING with the CERTIFICATE AS TO SERVICE OF NOTICE OF SPECIAL MEETING attached thereto, and the WAIVER OF NOTICE OF AND CONSENT TO SPECIAL MEETING, as signed by the Commissioners of said Authority, were read, ordered spread upon the minutes of this special meeting and filed for record.

NOTICE OF SPECIAL MEETING

TO: J. H. Faulkner  
Emile Nassar  
W. F. Thomas  
Harlan Page  
Oswald Boykin

You are hereby notified that a Special Meeting of the Commissioners of The Housing Authority of the City of Bay Minette, Alabama has been called for 5:00 p.m. on Wednesday, October 15, 1969 at the office of the Authority for the following purposes:

1. To discuss the NDP Program for 1970;
2. To consider all other matters which may properly come before the Board.

Dated this 10<sup>th</sup> day of October, 1969.

THE HOUSING AUTHORITY OF THE  
CITY OF BAY MINETTE, ALABAMA

BY: /s/ J. H. Faulkner  
Chairman

Exhibit "A" Continued

CERTIFICATE AS TO SERVICE OF NOTICE  
OF SPECIAL MEETING

I, Stephen A. McMillan, the duly appointed, qualified and acting Secretary of The Housing Authority of the City of Bay Minette, Alabama do hereby certify that on October 10, 1969, I served in the manner provided in the By-Laws of said Authority, upon each of the Commissioners thereof, a true and correct copy of the foregoing NOTICE OF SPECIAL MEETING.

Witness my signature this 15<sup>th</sup> day of October, 1969.

/s/ Stephen A. McMillan  
Secretary

WAIVER OF NOTICE OF AND CONSENT TO SPECIAL MEETING

We, the undersigned Commissioners of The Housing Authority of the City of Bay Minette, Alabama do hereby accept service of the foregoing NOTICE OF SPECIAL MEETING waiving any and all irregularities in such service and in said NOTICE, and we do hereby consent and agree that said Commissioners shall meet at the time and place named in said NOTICE and for the purposes therein stated.

/s/ W. F. Thomas

/s/ Oswald Boykin

/s/ Harlan A. Page

/s/ J. H. Faulkner

/s/ Emile J. Nassar

The following resolution was introduced by Commissioner Thomas, read in full and considered:

Be it resolved that the Commission of the Housing Authority of the City of Bay Minette, Alabama finds, determines and declares that the acquisition of the lands listed on the attached real estate appraisal tabulation and identified by parcel numbers which may be further identified by the land ownership map of the Urban Renewal Plan, is in the public interest and the acquisition is necessary for public use and for the uses and purposes set out in and authorized by the Code of Alabama of 1940 as amended, recompiled 1958 and as amended and by the provisions of Title 42, U.S.C.A. Sections 1401-1435, and 1441-1460 as amended and other sections as made and provided in connection with the execution of the Urban Renewal Program known as Neighborhood Development Program, Project Number Alabama A-1, according to the plan previously duly and legally adopted and approved by the Commissioners of the Housing Authority at a special meeting on October 16, 1968 and by the governing body of the City of Bay Minette, Alabama in regular session on October 15, 1968 and that the Executive Director is hereby authorized to acquire these properties at the price listed on the

Exhibit "A" Continued

form as the LPA's recommended price or at any lower price concurred in by the Regional Office of the Department of Housing and Urban Development by whatever means he deems appropriate in order to carry out the orderly execution of the Urban Renewal Plan.

Commissioner Thomas moved that the foregoing resolution be adopted as introduced and read, which motion was seconded by Commissioner Nassar, and upon roll call the "Ayes" and "Nays" were as follows:

AYES: J. H. Faulkner  
Emile Nassar  
Harlan Page  
Oswald Boykin  
W. F. Thomas

NAYS: None

The Chairman thereupon declared said motion carried and said resolution adopted.

CERTIFICATE

I, Stephen A. McMillan, the duly appointed, qualified and acting Secretary of The Housing Authority of the City of Bay Minette, Alabama, do hereby certify that the attached extract from the minutes of the Special meeting of the Commissioners of said Authority, held on October 15, 1969, is a true and correct copy of the original minutes of said meeting on file and of record insofar as said original minutes relate to the matters set forth in said attached extract, and I do further certify that the copy of the Resolution appearing in said attached extract is a true and correct copy of the Resolution adopted at said meeting and on file and of record.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Authority this 13<sup>th</sup> day of January, 1970.

/s/ Stephen A. McMillan  
Secretary

(SEAL)

STATE OF ALABAMA  
BALDWIN COUNTY

Personally appeared before me the undersigned authority, Stephen A. McMillan, who after first being duly sworn deposes and says that Exhibit "A" attached to the Application of Condemnation is a true and correct copy of the Minutes of The Housing Authority of the City of Bay Minette, Alabama, held on October 15, 1969, pertaining to that special meeting granting the authority, by the Directors, to acquire land as therein written.

/s/ Stephen A. McMillan  
Stephen A. McMillan

Exhibit "A" Continued

Sworn to and subscribed before me on this the 13<sup>th</sup> day of  
January, 1970.

/s/ Annette Bradford  
Notary Public, Baldwin County, Alabama

(SEAL)

STATE OF ALABAMA, BALDWIN COUNTY

Filed Jan. 15, 1970 M

Recorded Minutes book 54 page 706 [through 716]

/s/ Harry D'Olive L  
Judge of Probate S



Respondents' Addresses:

The Housing Authority of the  
City of Bay Minette, Alabama

406 Brady Road

Bay Minette, Alabama

DI 1-12-71 MILE 0

Prince Griffin

Griffin Standard Oil Station

Fairhope, Alabama 36532

DI 1-12-71 MILE 70

Ms. Annie P. Moorer

849 D'Olive Street

Bay Minette, Alabama

DI 1-12-71 MILE 83

Ms. Vada P. Potts

Douglas Route 2, Box 147

Douglas, Kansas 67039

Ms. Goida P. Griffin

113 Item Street

Mobile, Alabama 36600

James G. McCartha

East Second Street

Bay Minette, Alabama

DI 1-12-71 MILE 31

Ms. Irma E. McCartha

East Second Street

Bay Minette, Alabama

DI 1-12-71 MILE 0

C. H. Gahan

Bay Minette, Alabama

DI 1-12-71 MILE 0

Johnny Taylor

Whitehouse Fork Road

Bay Minette, Alabama

DI 1-12-71 MILE 4

Ms. Ida McCall

Bay Minette, Alabama

DI 1-12-71 MILE 4

Ms. Bessie Pleasant

Bay Minette, Alabama

DI 1-12-71 MILE 4

Allen Mason

906 McGhee Avenue

Bay Minette, Alabama

DI 1-12-71 MILE 4

Rev. A. T. McGhee

75 Scott Street

Atmore, Alabama 36502

DI 1-12-71 MILE 4

CASE NO. 11,471 BMR 834

\*\*\*\*\*

MAMIE KELLEY and  
AUBREY SMITH,

Complainants

VS.

THE HOUSING AUTHORITY OF THE  
CITY OF BAY MINETTE, BALDWIN  
COUNTY, ALABAMA;  
PRINCE GRIFFIN, as Executor,  
Estate of H. M. Parsons, Deceased;  
ANNIE P. MOORER; VADA P. POTTS;  
GOLDA P. GRIFFIN;  
JAMES G. MCCARTHA;  
IRMA E. MCCARTHA;  
McGHEE TEMPLE CHURCH OF GOD IN  
CHRIST, INC., a Corporation;  
C. H. GAHAN, JOHNNY TAYLOR,  
IDA McCALL, BESSIE PLEASANT,  
ALLEN MASON and A. T. McGHEE,  
Trustees of McGhee Temple Church  
of God in Christ, Inc., a  
Corporation,

Respondents

\*\*\*\*\*

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

IN EQUITY

\*\*\*\*\*

JAN 7 1971

KENNETH COOPER

ALICE J. DUCK

109 EAST 1ST STREET

BAY MINETTE, ALABAMA 36507

TELEPHONE 937-7412

CLERK  
REGISTER

JAN 7 1971

REC'D SHERIFF OF  
MOBILE COUNTY, ALA

JAN 20 9 36 AM

BY

FILED  
JAN 20 1971  
VCL

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, IN EQUITY  
CASE NO. 11,471-JUDGE TELFAIR J. MASHBURN

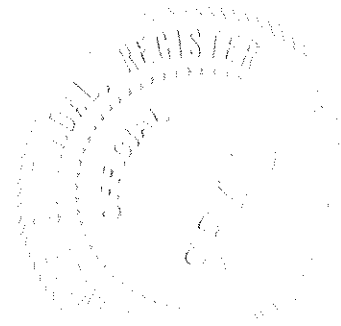
ATTORNEYS	STYLE OF CASE	RECORDED IN CIRCUIT COURT BOOK	RECORD PAGE
Kenneth Cooper Bay Minette, Alabama	Mamie Kelley & Aubrey Smith	113	562-622
	Vs: To Set Aside Decree	124	372-385
James R. Owen Bay Minette, Alabama	The Housing Authority of the City of Bay Minette, Baldwin County, Alabama, et al.		
Harry J. Wilters Bay Minette, Alabama			
PLEADINGS ETC.	FILING DATE	ORDERS OF COURT	
1. Summons & Petition to Set Aside Decree (Svd. as noted on cover of Petition)	Jan. 7, 1971		
2. Demurrer	Feb. 3, 1971		
3. Demurrer	Feb. 5, 1971		
4.	Jun. 16, 1971	Order	
5. Answer	Jun. 23, 1971		
6. Answer	Jul. 6, 1971		
7.	Sept. 28, 1971	Decree	
8. Notice of Appeal & Citation on appeal to Supreme Court (Svd. on James R. Owen and Harry J. Wilters, Attys. for Respts. on Nov. 9, 1971 by W. A. Tolbert, Deputy Sheriff).	Nov. 9, 1971		

- continued -

9. Security For Court Costs	Nov. 9, 1971	
10. Certificate of Appeal	Nov. 12, 1971	
11.	Jun. 15, 1972	Supreme Court Ruling
12.	Jun. 15, 1972	Certificate of Reversal
13. Petition for transfer of cause	Feb. 26, 1973	
14.	Feb. 26, 1973	Order
15. Bill for Costs	Feb. 26, 1973	

I, Eunice G. Tindal, in my capacity as Register in Equity of Baldwin County, Alabama, do hereby certify that the above is a true and correct transcript of all the minutes, orders and other proceedings in the above styled cause in this Court.

In witness Whereof, I have hereunto set my hand and official seal as such Register in Equity of said Court, at Baldwin County, Alabama, on this the 2nd day of March, 1972.



Eunice G. Tindal  
Register, Baldwin County Circuit Court, In Equity.



MAMIE KELLEY and AUBREY SMITH,	)	
	)	
Complainants,	)	IN THE CIRCUIT COURT OF
	)	
VS.	)	BALDWIN COUNTY, ALABAMA
	)	
THE HOUSING AUTHORITY OF THE	)	IN EQUITY NO. 11471
CITY OF BAY MINETTE, BALDWIN	)	
COUNTY, ALABAMA; ET AL,	)	
	)	
Respondents.	)	

DEMURRER

Now comes McGhee Temple Church of God in Christ, Inc., a corporation; C. H. Gahan, Johnny Taylor, Ida McCall, Bessie Pleasant, Allen Mason and A. T. McGhee, Trustees of McGhee Temple Church of God in Christ, Inc., a corporation, and demur to the petition to set aside decree heretofore filed in said cause, and as grounds for said demurrer assign the following:

1. There is no equity in the said petition.
2. It affirmatively appears from the said petition that the complainants had notice of the hearing set in the Probate Court on January 27, 1970.
3. It affirmatively appears that the order of the Circuit Court of Baldwin County, Alabama, which the complainants seek to set aside was entered more than six months prior to the filing of the said petition and, therefore, this court has no jurisdiction over the said petition.
4. There is a misjoinder of parties respondent.
5. It affirmatively appears that the said complainants have heretofore filed a petition seeking to have the said decree complained of set aside which said petition was denied by this court.
6. It affirmatively appears that this court is without jurisdiction to set aside the decree of the Circuit Court of Baldwin County, Alabama, dated June 16, 1970, Case No. 9170, Civil Division.
7. It affirmatively appears that this court is without jurisdiction to set aside that certain decree of condemnation

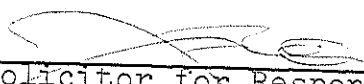
entered by the Probate Court of Baldwin County, Alabama, on January 29, 1970, Case No. 6795.

I.

Now come the aforesaid respondents and demur to that aspect of the petition which asks the court to enter a decree by the terms of which that certain decree of condemnation by Probate Court of Baldwin County, Alabama, dated the 29th of January, 1970, Case No. 6795, be declared null, void and of no legal force and effect and as grounds for said demurrer assign the above numbered demurrers separately and severally, as if fully set out herein.

II.

Now come the aforesaid respondents and demur to that aspect of the petition which seeks to set aside the decree of the Circuit Court of Baldwin County, Alabama, Civil Division, Case No. 9170, dated June 16, 1970, and as grounds for said demurrer assign the above numbered demurrers separately and severally, as if fully set out herein.

  
Solicitor for Respondents, McGhee Temple Church of God in Christ, Inc., a corporation; C. H. Gahan, Johnny Taylor, Ida McCall, Bessie Pleasant, Allen Mason, A. T. McGhee, Trustees of McGhee Temple Church of God in Christ, Inc., a corporation.

**FILED**

**FEB 3 1971**

**EUNICE G. TINDAL, Register  
Baldwin Co., Ala.**

MAMIE KELLEY and AUBREY	X	
SMITH,	X	
	X	IN THE CIRCUIT COURT OF
Complainants,	X	
	X	BALDWIN COUNTY, ALABAMA
vs.	X	
	X	IN EQUITY
THE HOUSING AUTHORITY OF	X	
THE CITY OF BAY MINETTE,	X	CASE NO. 11,471
BALDWIN COUNTY, ALABAMA;	X	
ET AL,	X	
	X	
Respondents.	X	

DEMURRER

Now comes The Housing Authority of the City of Bay Minette, Baldwin County, Alabama, and demur to the Petition to set aside decree heretofore filed in said cause, and as grounds for said demurrer assigns the following:

1.

That there is no equity in the said Petition.

2.

It affirmatively appears from the said Petition that the Complainants had notice of the hearing set in the Probate Court on January 27, 1970.

3.

It affirmatively appears that the Order of the Circuit Court of Baldwin County, Alabama, which the Complainants seek to set aside was entered more than six months prior to the filing of the said Petition, and therefore, this Court has no jurisdiction over the said Petition.

4.

That there is a misjoinder of parties Respondent.

5.

It affirmatively appears that the said Complainants have heretofore filed a Petition seeking to have the said Decree complained of set aside which said Petition was denied by this Court.

6.

It affirmatively appears that this Court is without jurisdiction to set aside the Decree of the Circuit Court of Baldwin County, Alabama, dated June 16, 1970, Case #9170, Civil Division.

7.

It affirmatively appears that this Court is without jurisdiction to set aside that certain Decree of Condemnation entered by the Probate Court of Baldwin County, Alabama, on January 29, 1970, Case No. 6795.

I.

Now comes the aforesaid Respondent and demur to that aspect of the Petition which asks the Court to enter a Decree by the terms of which that certain Decree of Condemnation by Probate Court of Baldwin County, Alabama, dated the 29th day of January, 1970, Case No. 6795, be declared NULL, VOID and OF NO LEGAL FORCE AND EFFECT and as grounds for said demurrer assigns the above numbered demurrers separately and severally, as if fully set out herein.

II.

Now comes the aforesaid Respondent and demur to that aspect of the Petition which seeks to set aside the Decree of the Circuit Court of Baldwin County, Alabama, Civil Division, Case No. 9170, dated June 16, 1970, and as grounds for said demurrer assigns the above numbered demurrers separately and severally, as if fully set out herein.

**CERTIFICATE OF SERVICE**

I do hereby certify that I have on this 5 day of February, 1971, served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United States Mail, properly addressed, and first class postage prepaid.

WILTERS & BRANTLEY

By: Harry J. Wilters, Jr.

Harry J. Wilters, Jr.  
Harry J. Wilters, Jr., Attorney for  
The Housing Authority of the City of  
Bay Minette, Baldwin County, Alabama,

**FILED**

Feb 5 1971

VOL 113 PAGE 618

EUNICE G. TINDAL, Register  
Baldwin Co., Ala.



MAMIE KELLEY and  
AUBREY SMITH,

Complainants

-VS-

THE HOUSING AUTHORITY OF THE  
CITY OF BAY MINETTE, BALDWIN  
COUNTY, ALABAMA, et al

Respondents

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

CASE NO. 11,471

ORDER

This cause coming on to be heard upon the demurrers filed in this cause to the Petition To Set Aside Decree; and the same being understood, the Court is of the opinion that the Respondents' demurrers are not well taken. It is therefore

ORDERED, ADJUDGED and DECREED by the Court that the demurrers heretofore filed in this cause by the Respondents are overruled; and the Respondents are each given 20 days in which to file an answer in this cause.

Dated this 16<sup>th</sup> day of June, 1971.

Logan J. Maschburn  
CIRCUIT JUDGE

FILED

JUN 16 1971

ERINCE G. TINDAL, Register  
Baldwin Co., Ala.

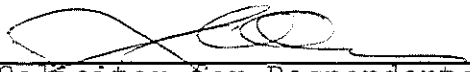
MAMIE KELLEY and AUBREY SMITH, )  
Complainants, )  
VS. )  
THE HOUSING AUTHORITY OF THE )  
CITY OF BAY MINETTE, BALDWIN )  
COUNTY, ALABAMA; ET AL, )  
Respondents. )

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY NO. 11471

ANSWER

Now comes McGhee Temple Church of God in Christ, Inc., a corporation; C. H. Gahan, Johnny Taylor, Ida McCall, Bessie Pleasant, Allen Mason and A. T. McGhee, Trustees of McGhee Temple Church of God in Christ, Inc., a corporation, and for answer to the bill of complaint heretofore filed in said cause and to each paragraph thereof, separately and severally, say:

1. They deny the allegations of the bill of complaint and demand strict proof thereof.

  
Solicitor for Respondents, McGhee Temple Church of God in Christ, Inc., a corporation; C. H. Gahan, Johnny Taylor, Ida McCall, Bessie Pleasant, Allen Mason, A. T. McGhee, Trustees of McGhee Temple Church of God in Christ, Inc., a corporation.

FILED

JUN 23 1971

EUNICE G. TINDAL, Register  
Baldwin Co., Ala.

*mailed Copy to attys  
Cooper & White  
6/23/71*

MAMIE KELLEY and AUBREY  
SMITH,

Complainants,

vs.

THE HOUSING AUTHORITY OF  
THE CITY OF BAY MINETTE,  
BALDWIN COUNTY, ALABAMA,  
ET AL.,

Respondents.

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

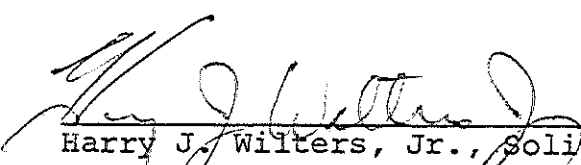
CASE NO. 11,471

ANSWER

Comes now The Housing Authority of the City of Bay  
Minette, Baldwin County, and for answer to the Bill of Complaint  
heretofore filed in said caus, and to each count thereof separately  
and severally, says:

1.

They deny the allegations of the Bill of Complaint, and  
demand strict proof thereof.

  
Harry J. Wilters, Jr., Solicitor for  
The Housing Authority of the City of  
Bay Minette, Respondent.

FILED

JUL 6 1971

ELNICE G. FINDAL, Register  
Baldwin Co., Ala.

MAMIE KELLEY and  
AUBREY SMITH,

Complainants

-VS-

THE HOUSING AUTHORITY OF THE  
CITY OF BAY MINETTE, BALDWIN  
COUNTY, ALABAMA;  
PRINCE GRIFFIN, as Executor  
Estate of H. M. Parsons, Deceased;  
ANNIE P. MOORER; VADA P. POTTS;  
GOLDA P. GRIFFIN;  
JAMES G. McCARTHA;  
IRMA E. McCARTHA;  
McGHEE TEMPLE CHURCH OF GOD IN  
CHRIST, INC., a Corporation;  
C. H. GAHAN, JOHNNY TAYLOR,  
IDA McCALL, BESSIE PLEASANT,  
ALLEN MASON and A. T. McGHEE,  
Trustees of McGhee Temple Church  
of God in Christ, Inc., a  
Corporation,

Respondents

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

CASE NO. 11,471

#### DECREE

This cause coming on to be heard was submitted upon the Petition To Set Aside Decree by the Petitioners, demurrers by the Respondent The Housing Authority of the City of Bay Minette, Baldwin County, Alabama, and McGhee Temple Church of God in Christ, Inc., a Corporation, C. H. Gahan, Johnny Taylor, Ida McCall, Bessie Pleasant, Allen Mason and A. T. McGhee, Trustees of McGhee Temple Church of God in Christ, Inc., a Corporation, and the answers by each of said Respondents, and testimony taken ora tenus by the Court Reporter, the Complainants being present together with their solicitor of record, Kenneth Cooper, and the Respondents being represented by their solicitors of record, mainly, James R. Owen for the Respondent McGhee Temple Church of God in Christ, Inc., a Corporation, et al, and Harry J. Wilters for the Respondent The Housing Authority of the City of Bay Minette, Baldwin County, Alabama. Upon the hearing the Complainants were permitted to delete the name of the Complainant Aubrey Smith, it having been shown to the satisfaction of the Court that he had no interest in this cause. Upon consideration of the premises, the Court is of the opinion that the Complainant Mamie Kelley is not entitled to the relief prayed for. It is therefore

ORDERED, ADJUDGED and DECREED by the Court that the Complainant Mamie Kelley is indebted to William H. Hall in the amount set forth in the Decree of this Court, Civil Division Case No. 9,170. It is further

Dated this 28<sup>th</sup> day of September, 1971.

J. Edgar A. Washburn  
CIRCUIT JUDGE

MAMIE KELLY,

Complainant

-VS-

THE HOUSING AUTHORITY OF THE  
CITY OF BAY MINETTE, BALDWIN  
COUNTY, ALABAMA, et al

Respondents

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IN THE CIRCUIT COURT OF


BALDWIN COUNTY, ALABAMA

IN EQUITY

CASE NO. 11,471

NOTICE OF APPEAL

Now comes Mamie Kelly, by her solicitor of record, Kenneth Cooper, and appeals to the Court of Civil Appeals of the State of Alabama from the decree of the Circuit Court of Baldwin County, Alabama, In Equity, rendered in this cause on the 28<sup>th</sup> day of September, 1971.

  
SOLICITOR FOR COMPLAINANT

FILED

VOL 124 PAGE 372

NOV 9 1971

EUNICE G. TINDAL, Register  
Baldwin Co., Ala.

The State of Alabama, BALDWIN County

IN CIRCUIT COURT, IN EQUITY

MAMIE KELLY & AUBREY SMITH

Complainant

Vs. THE HOUSING AUTHORITY OF THE CITY OF BAY MINETTE, ALABAMA, et al  
Defendant

To the Sheriff of said County:

A decree having been rendered against MAMIE KELLY & AUBREY SMITH  
in the above stated cause in the Circuit Court, In Equity, of said County,  
on the 28th day of September, 1971, and from such decree

MAMIE KELLY

has obtained an appeal to the ~~SUPREME COURT OF ALABAMA~~ Court of Civil Appeals of the State of Alabama.

You are therefore hereby commanded to summon James R. Owen & Harry J. Wilters,  
Attorneys for Respondents

to appear at the \_\_\_\_\_ Term, 19\_\_\_\_, of the Supreme Court of Alabama to defend said appeal, if they desire.

Witness my hand, this 9th day of November, 1971

124 PAGE 373

Emilie J. Ladd, Register.

**The State of Alabama**

BALDWIN County

**IN CIRCUIT COURT, IN EQUITY**

MAMIE KELLE & AUBREY SMITH

Vs.

T. ) **HOUSING AUTHORITY OF THE**  
**CITY OF BAY MINETTE, ALABAMA**  
et al

**CITATION ON APPEAL TO ~~SUPREME COURT~~**

**COURT OF CIVIL APPEALS OF THE**  
**STATE OF ALABAMA**  
Issued November 9th, 1971.

Conice L. Lindal, Register.

SERVE: James R. Owen and  
Harry J. Wilters, Attys.  
for respondents.

Received in office

November 9, 1971

\_\_\_\_\_, Sheriff.

Executed this 11-9, 1971

by serving a copy on James R. Owen

Harry J. Wilters

Taylor Wilkins Sheriff.

W. B. Elliott  
Deputy Sheriff.

Sheriff, clerk \_\_\_\_\_ miles or

Ten Cents per mile Total \$ \_\_\_\_\_

**TAYLOR WILKINS, Sheriff**

BY \_\_\_\_\_  
DEPUTY SHERIFF

NOV 9 1971

TAYLOR WILKINS  
SHERIFF



MAMIE KELLY,

Complainant

-VS-

THE HOUSING AUTHORITY OF THE  
CITY OF BAY MINETTE, BALDWIN  
COUNTY, ALABAMA, et al

Respondents

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

CASE NO. 11,471

SECURITY FOR COURT COSTS

Comes now Kenneth Cooper, solicitor for complainant in this cause and acknowledges myself as surety for all court costs of appeal of even date to the Court of Civil Appeals of the State of Alabama, and I hereby agree to pay all such costs. And for the payment of this bond I waive my right of exemption to personal property under the Constitution and Laws of the State of Alabama.

Kenneth Cooper (L.S.)

Taken and approved this 9th day of November, 1971.

FILED

NOV 9 1971

EUNICE G. TINDAL, Register  
Baldwin Co., Ala.

Eunice G. Tindal  
REGISTER, CIRCUIT COURT, IN EQUITY

No. 11,471Mamie Kelly

Complainant.

vs.

The Housing Authority of the City of Bay Minette,  
Baldwin County, Ala. et al Respondent.

I, Eunice G. Tindal, Register of the Circuit Court In Equity,  
Baldwin County, Alabama, hereby certify that in the cause of  
Mamie Kelly Complainant,

vs.

The Housing Authority of the City of Bay Minette, Respondent,  
Baldwin County, Alabama Et Al

which was tried and determined in this Court on the 28th day of September 19 71,  
in which there was a decree in favor of the Respondents

On the 9th day of November 19 71, the Complainant  
took an appeal to the Civil Appeals Court of Alabama, to be  
holden of and for said State.

I further certify that Mamie Kelly  
filed security for cost of appeal to the Circuit Court, on the 9th day of  
November 19 71, and that Kenneth Cooper,  
are sureties on the appeal bond.

I further certify that notice of said appeal was on the 9th day of November  
19 71, served on James R. Owen  
Harry J. Wilters as attorney of record for said appellee.

Witness my hand and the seal of this Court, this the 12th day of November  
19 71.

FILED

NOV 12 1971

EUNICE G. TINDAL, Register  
Baldwin Co., Ala.

Eunice G. Tindal  
Register of the Circuit Court In Equity of  
Baldwin County, Alabama.

JUN 15 1972

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1971-72

Mamie Kelley

1 Div. 734

v.

The Housing Authority of the City of Bay Minette

Baldwin County, Alabama, et al.

Appeal from Baldwin Circuit Court, In Equity

BLOODWORTH, JUSTICE.

The bill of complaint in this case is a bill in the nature of a bill of review. It was filed by Mamie Kelley and her brother, Aubrey Smith, alleging that

Kelley v. Housing Authority

2.

they had no notice of an appeal taken by co-condemnees to the circuit court from an order of condemnation made in the probate court of Baldwin County, wherein their lands were condemned. They allege that trial was had in the circuit court without their knowledge. They pray that the order of condemnation in the circuit court be set aside and a new trial granted. Subsequently, Aubrey Smith was stricken as a party when he conveyed his interest to appellant Mamie Kelley.

The circuit court of Baldwin County, in equity, denied the relief sought and Mamie Kelley appealed to the Court of Civil Appeals. The case was submitted in that court February 10, 1972. On May 15, 1972, it was transferred to this court. Title 13, § 111(11), Code of Alabama, Recompiled 1958. On May 19, 1972, the case was submitted in this court.

It appears that appellee, The Housing Authority of the City of Bay Minette, filed a petition against appellant Kelley and others in the probate court of Baldwin County to condemn certain lands in the City of Bay Minette. At the hearing on this petition, appellant Kelley was present though she was not represented by counsel. The lands were condemned by the probate court and an award of damages made to the condemnees on January 29, 1970. Thereafter, certain of the condemnees (but not appellant Kelley) appealed to the circuit court.

Kelley v. Housing Authority

3.

No copy of the "notice of appeal" as required by Title 19, § 17, Code of Alabama, 1940, was served on appellant Kelley who was then, and is now, a resident of the State of Florida. Nor, does the transcript show any substituted service.

It further appears that trial was held in the circuit court on June 16, 1970, the lands were condemned, and damages awarded the condemnees, including this appellant. The evidence is undisputed that appellant had no notice of the appeal nor of the circuit court trial. She was not present nor represented by counsel. She first learned of the trial having been held in circuit court when a friend wrote her about it a week or two later. Her bill in the nature of a bill of review was filed in January of 1971.

The principal contention made on this appeal by appellant is that the circuit court erred in not setting aside its condemnation order and granting a new trial when it appeared, without dispute, that appellant was never served with notice of appeal, nor had notice of the trial, nor was present thereat.

Appellees admit this issue is the crux of this appeal. In brief, they admit that appellant had no notice of the appeal to the circuit court from the probate court and that she should have been notified. However, appellees contend she is estopped from being granted relief under a bill in the nature of a bill of review because

Kelley v. Housing Authority

4.

they say that she waited too long, from June to January, to file her bill. There is no merit in this contention. See Equity Rule 66; Multer v. Multer, 280 Ala. 458, 195 So. 2d 105.

Appellees also contend that appellant filed a petition to set aside the circuit court's order of condemnation, which was denied by the circuit court, from which order she could have appealed. We find nothing in the record concerning such a petition or an order thereon. Thus, there is nothing before us on this issue.

It does appear that appellees sought by writ of certiorari to bring up certain alleged records, presumably pertaining to this issue. The writ was denied by the Court of Civil Appeals. The correctness of this decision is not before us on this appeal.

Title 19, § 17, Code of Alabama 1940, is the provision of law which governs appeals from orders of condemnation entered by probate courts. Stanton v. Monroe County, 261 Ala. 61, 72 So. 2d 854 (1954); Harris v. Mobile Housing Board, 267 Ala. 147, 100 So. 2d 719 (1958).

Title 19, § 17, supra, provides:

"Any of the parties may appeal from the order of condemnation to the circuit court of the county within thirty days after the making of the order of condemnation, by filing in the court rendering the judgment,

Kelley v. Housing Authority

5.

a written notice of appeal, a copy  
of which shall be served on the  
opposite party, or his attorney,  
and on such appeal, the trial shall  
be de novo, and it shall be necessary  
to send up the proceedings only as  
to the parties appearing or against  
whom an appeal is taken." [Our  
emphasis]

This court has heretofore observed that:

"The taking of one's property under  
the eminent domain statutes is a serious  
matter, and any party interested in any  
tract has the right to appeal to the  
circuit court in order that a jury may  
pass on the amount of the award, if any.

\* \* \* " Harris v. Mobile Housing  
Board, supra, 267 Ala. at p. 149.

We specifically held in Harris, supra, that the  
appeal need not be taken in the name of all the parties though  
the better practice would seem to be to do so.

If appeal is taken in the name of one party  
only, we held, " \* \* \* notice should be given to all  
the other interested parties who are shown by the proceedings  
to be interested along with the appellant.." Harris v. Mobile  
Housing Board, supra. We also held that this notice should

Kelley v. Housing Authority

6.

be given by the circuit court clerk to those parties who did not join in the appeal, notifying them to appear in the circuit court at the time to which the appeal is returnable and unite in the appeal if deemed advisable. The notice may be served on the party or his attorney of record in the probate court. Nonresidents, not represented by an attorney in the probate court, should be sent a notice of such appeal by registered mail, or publication for two weeks in some public newspaper, if there is time therefor, otherwise for one week. Harris v. Mobile Housing Board, supra. We also held that "the circuit court can, under its existing practice, cause service of notice to be made when service has not been perfected as hereinabove outlined." Harris, supra; Urban v. State, 279 Ala. 8, 180 So. 2d 910 (1965), cert. den. 87 S. Ct. 510, 385 U.S. 972, 17 L. Ed. 2d 436.

Thus, it results that the final decree denying appellant the relief sought must be reversed and remanded, and the trial court ordered to render a final decree setting aside the judgment of condemnation in the circuit court and granting appellant a new trial therein. The appellant should be given notice of the appeal (from the probate court) by the circuit clerk in order that she may come in and join in the appeal, and in the trial de novo in the circuit court, if she be so advised.



Kelley v. Housing Authority

7.

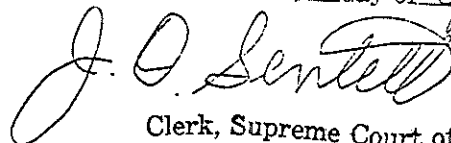
In view of the result we reach, it would seem to be both unnecessary and inappropriate to comment on the other assignments of error argued.

REVERSED AND REMANDED FOR ENTRY OF A DECREE  
IN CONFORMITY HEREWITH.

Heflin, C. J., Merrill, Coleman and McCall, JJ.,  
concur.

I, J. O. Sentell, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.

Witness my hand this <sup>15<sup>th</sup></sup> day of June 1977



Clerk, Supreme Court of Alabama

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 71-72

1 Div. No. 734

To the ~~Clerk~~ Register of the Circuit Court of Baldwin

County, Greeting:

Whereas, the Record and Proceedings of the Circuit Court In Equity

of said county, in a certain cause lately pending in said Court between

Mamie Kelley, Appellant,

and The Housing Authority of the City of Bay Minette, Baldwin County, Alabama, et al, Appellee,

wherein by said Court it was considered adversely to said appellant, were brought before the Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant;

Now, it is hereby certified:

That the Supreme Court on the 15th day of June, 1972, reversed and annulled the decree of the Court below, and remanded the cause to said Court for ~~further proceedings therein~~ entry of a decree in conformity with the opinion this day rendered in this cause.

That the Court further ordered the appellee s, The Housing Authority of the City of Bay Minette, Baldwin County, Alabama, and McGhee Temple Church of God in Christ, Inc., a Corporation, and C. H. Gahan, Johnny Taylor, Ida McCall, Bessie Pleasant, Allen Mason, and A. T. McGhee, Trustees of McGhee Temple Church of God in Christ, Inc., a Corporation, pay the costs accruing on said appeal in this Court and in the Court below, for which costs let execution issue.

Witness, J. O. Sentell, Clerk of the Supreme Court of Alabama, at the Judicial Department Building, this the 15th day of June

J. O. Sentell 1972  
Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 19 71-72

1 Div., No. 734

Mamie Kelley

Appellant,

vs.

The Housing Authority of the  
City of Bay Minette, Baldwin  
County, Alabama, et al

Appellee.

Baldwin Circuit  
From In Equity 11,471 Court.

CERTIFICATE OF  
REVERSAL

The State of Alabama,

County.

} Filed

this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

MAMIE KELLEY, et al

Complainant

-VS-

THE HOUSING AUTHORITY OF  
THE CITY OF BAY MINETTE,  
ALABAMA

Respondent

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

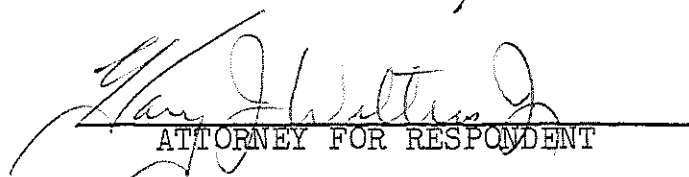
CASE NO. 11471

PETITION

FOR TRANSFER OF CAUSE

To Honorable Telfair J. Mashburn, Judge of said Court comes now the parties hereto, by and between their respective attorneys of record and petition this Honorable Court to transfer this cause to the Circuit Court of Baldwin County, Alabama Law Side from the Equity Division of the Circuit Court of Baldwin County, Alabama, and they assign as ground therefore the fact this cause now partakes of the civil nature rather than equity.

  
ATTORNEY FOR COMPLAINANT

  
ATTORNEY FOR RESPONDENT

ORDER

The foregoing petition having been presented to the Court and the same being understood the Court is of the opinion that the petitioners are entitled to the relief prayed for. It is therefore,

ORDERED, ADJUDGED and DECREED by the Court that the Register of this Court transfer the whole file in this cause to the Civil Division of this Court.

Dated this 26<sup>th</sup> day of February 1973.

FILED

FEB 26 1973

EUNICE G. TINDAL, Register  
Baldwin Co., Ala.

  
CIRCUIT JUDGE

2/26/73 The State of Alabama, \_\_\_\_\_ County

No. 11,471 \_\_\_\_\_ CIRCUIT COURT, IN EQUITY

To \_\_\_\_\_

Dear Sir: At the \_\_\_\_\_ Term, 19\_\_\_\_ by a decree of this Court

Mamie Kelley vs The Housing Authority, et al

recovered of \_\_\_\_\_

the sum Two hundred, three & 98/100 \_\_\_\_\_ Dollars,

and \_\_\_\_\_ Dollars, costs of suit.

Following is an itemized statement of costs in this cause, and I request you to remit the amount so as to save an additional expense of an execution.

Please enclose this Cost Bill with remittance to be receipted and returned to you.

Respectfully yours,

Eunice S. Lidal, Register

REGISTER'S FEES:	AMOUNT	REGISTER'S FEES—Continued	AMOUNT
1. Docketing Cause .....	\$ 2.00	50. Entering each certificate of Supreme Court .....	.65
2. Issuing Subpoena .....	.95	51. Transcript, per 100 words .....	.20
3. Per copy .....	.65	State certificate .....	.65
4. Entering Return .....	.20	Relieving minors of disability of non-age .....	8.00
5. Entering Appearance .....	.65	Answer and Waiver Divorce case, 2 copies of Decree .....	12.00
6. Filing Bills or other papers .....	.20	Decree Pro Confesso on Personal service, Divorce case, 1 copy of decree .....	20.00
7. Decree pro confesso .....	1.55	Decree Pro Confesso on Registered mail service, Divorce case, 1 copy of decree .....	20.00
8. Noting all Testimony .....	.65	Decree Pro Confesso on Publication, divorce Case with 1 copy of decree .....	20.00
9. Recording Questions and Answers per 100 words .....	.30	Certified copy of Divorce decree .....	1.25
10. For all other services relating to such proceedings .....	1.25	Issuing execution .....	.95
11. Final Record, 100 words .....	.25	Entering return .....	.20
12. Entering Decree .....	1.25	Total Register's Fees .....	159 85
13. Order of Publication .....	1.55	SHERIFF'S FEES:	
14. Abstract of Publication, 100 words .....	.20	Summoning on Bill, Each Defendant .....	\$ 1.50
15. Decree appointing Guardian ad Litem .....	1.55	Executing Subpoenas for Witnesses, ea. ....	.75
16. Issuing Attachment writ .....	1.15	Executing Writs of Possession, each .....	5.00
17. Entering return .....	.20	Executing Scire Facias or Notice, each .....	1.50
18. Issuing injunction writ or ne exeat .....	1.75	Taking and Approving Bonds, each .....	2.00
19. Per Copy .....	.65	Impaneling Jury .....	.75
20. Entering Return .....	.20	Collection Execution for Costs only, ea. ....	1.50
21. Entering order submitting cause for decree .....	.65	Sheriff's Commissions .....	
22. Any other order .....	.30	Mileage (except Witness Subpoenas) .....	
23. Copy of Bill or other paper, per 100 words .....	.20	Total Sheriff's Fees .....	33 50
24. Issuing commission to take testimony .....	.95	Summary of Fees, Costs and Judgment—	
25. Receiving and filing each package of testimony .....	.15	Fees in Circuit Court:	
26. Endorsing each package of depositions published .....	.15	1. Register's Fees .....	159 85
27. Taking accounts, swearing witness, etc., per day .....	3.75	2. Ex-Register's Fees .....	33 50
28. Taking testimony on reference, 100 words .....	.20	3. Sheriff's Fees .....	
29. Report of Register .....	3.75	4. Ex-Sheriff's Fees .....	
30. Issuing subpoena, each witness .....	.30	5. Witness Fees .....	
31. Witness certificate .....	.30	6. Commissioner's Fees .....	
32. Hearing application for appointment of Receiver or Trustee .....	3.75	7. Fair Trial Tax .....	2 00
33. Settlement with Receiver, Trustee, Adm. or Exec. ....	5.00	8. Guardian Ad Litem .....	
34. Examining Vouchers .....	.20	9. Publisher's Fees .....	
35. Examining Answer or exception .....	3.75	10. Solicitor's Fees .....	
36. Commissions on sale .....		11. Court Reporter's Fees, Per Day or Fraction Thereof .....	5 00
37. For Receiving, keeping and paying out money other than that arising from sale .....		12. Trial Tax .....	4 50
38. Deed to property sold .....	5.00	Fees and Costs in Inferior Court:	
39. Notices sent by mail to creditors .....	.20	15. Clerk of Inferior Court, Fees .....	
40. Filing, Receipting for and docketing each claim .....	.30	16. Sheriff's Fees .....	
41. Entries on subpoena docket .....	.65	17. Witness Fees .....	
42. Entries on commission docket .....	.65	18. <u>C. M.</u> .....	1 13
43. Issuing certificate of Judgment to be recorded in Probate Court .....	.30	19. Costs in Probate Court .....	
44. Taking and approving Bond .....	1.25	20. Total Fees and Costs in Inferior Court .....	
45. Each certificate or affidavit with seal .....	.95	21. Total Fees and Costs .....	
46. Each certificate or affidavit without seal .....	.65	22. Judgment .....	
47. Each Notice not otherwise provided for .....	.95	23. ....	
48. Entering orders by the Register .....	.65	24. ....	
49. Recording resignation, removal, or sug- gestion of death of trustee .....	.95	25. Total Fees, Costs and Judgment .....	203 98

No. \_\_\_\_\_ Page \_\_\_\_\_

# The State of Alabama

COUNTY

**CIRCUIT COURT, IN EQUITY**

**vs. Complainant**

Defendant

**COST BILL, CIRCUIT COURT, IN EQUITY**

Received of \_\_\_\_\_

...Dollars

in payment of the above, this the.....day of

\_\_\_\_\_, 19\_\_\_\_\_

Register