

**IN THE SUPREME COURT OF MISSISSIPPI**

**JAMES ALBERT WIGGINS**

**APPELLANT**

**VS.**

**CAUSE NO. 2006-CA-01126**

**BILLY RAY PERRY**

**APPELLEE**

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**BRIEF OF APPELLEE**

**ORAL ARGUMENT NOT REQUESTED**

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Billy Ray Perry - Appellee/Plaintiff Below
2. James Albert Wiggins - Appellant/ Defendant Below
3. Lindsey C. Meador - Attorney for Appellee/Plaintiff Below
4. Christopher E. Kittell - Attorney for Appellant/Defendant Below
5. Honorable William G. Willard, Jr., Chancery Court Judge for Bolivar County,  
Mississippi

**THIS**, the 5<sup>th</sup> day of January, 2007.

  
**LINDSEY C. MEADOR, MSB NO. [REDACTED]**  
Attorney for Appellee

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## **STATEMENT OF THE ISSUE**

Whether the Chancery Court of Bolivar County, Mississippi, had subject matter jurisdiction over Billy Ray Perry's Petition for Damages, Injunctive and Other Relief Regarding Interest in Land?

## **STATEMENT OF THE CASE**

Billy Ray Perry (Perry) adopts the statement of the case insofar as the nature of the case and course of proceedings in the lower court as filed by James Albert Wiggins (Wiggins) with the exception that Wiggins omits the fact that Wiggins previously sought an interlocutory appeal on the issue of whether the Chancery Court of Bolivar County had subject matter jurisdiction. Wiggins Petition for Interlocutory Appeal was denied on March 26, 2006, by Order of the Supreme Court of Mississippi. R.119.

## **STATEMENT OF FACTS RELEVANT TO ISSUE PRESENTED FOR REVIEW**

Perry's Petition for Damages, Injunctive and Other Relief Regarding Interest in Land was filed in the Chancery Court of the Second Judicial District of Bolivar County on October 5, 2004. R3. Wiggins, through counsel, entered his appearance on October 14, 2004. R8.

The Petition basically alleged that Wiggins had sold a house and lot to Perry by deed dated December 18, 2000, and that thereafter Wiggins remained in possession of the property as a tenant. Eventually, Wiggins stopped paying the rent due under the lease in force, and Perry sought injunctive relief to take possession of the property, collect rents due, and/or have Wiggins enter into a new rental agreement.

Wiggins never answered the Petition, and, after a status conference, on November 17, 2004, Perry filed his Motion to Dismiss Anticipated Pleadings based upon representations made by Wiggins' counsel at the status conference. R.19. Wiggins never answered or responded to the Motion to Dismiss Anticipated Pleadings.

Thereafter, on July 13, 2005, Perry filed a Motion for Summary Judgment which was properly served upon Wiggins who was represented by counsel. R27. In this Motion for Summary Judgment, appropriately supported by affidavits, Perry set forth that at the time of the execution of the December 18, 2000, deed in favor of Perry, Wiggins had full mental capacity and was not the victim of any fraud, duress, or undue influence. Wiggins never answered the Motion for Summary Judgment.

The Motion for Summary Judgment was brought on for hearing, and on the Friday before the hearing scheduled for Monday, November 7, 2005, in a telephone status

conference, Wiggins advised, through counsel, that he had not filed a response to the Motion for Summary Judgment and would not have affidavits forthcoming in opposition to said motion. Accordingly, summary judgment was granted by Order dated November 7, 2005, and entered on November 28, 2005. R.38. The Court retained jurisdiction over the issues raised in the Petition for Damages, Injunctive and Other Relief Regarding Interest in Land, and specifically the issue of whether back rent was owed from Wiggins to Perry, and if so, in what amount, as well the issue of attorney's fees and costs.

Thereafter, on December 16, 2005, Wiggins filed his Motion to Set Aside Order/Motion to Stay Current Order and Motion to Dismiss for Lack of Jurisdiction. R.42. After response and briefing by both sides, the Court overruled the Motion to Set Aside Order/Motion to Stay Current Order and Motion to Dismiss for Lack of Jurisdiction, ruling that at all times the Chancery Court of Bolivar County had subject matter jurisdiction, and that Wiggins' MRCP Rule 60 motion was not well taken in that extraordinary and compelling circumstances did not weigh in Wiggins' favor. R.112-118.

Thereafter, Wiggins filed a Petition for Permission to File Interlocutory Appeal which was denied by the Supreme Court of Mississippi on March 22, 2006, by Order entered March 24, 2006. R.119. Final judgment was executed by the Chancery Court of Bolivar County, Mississippi, in favor of Perry on May 26, 2006. R.120-122. Thereafter, Wiggins filed his Notice of Appeal on June 28, 2006.

The sole issue on this appeal is whether the Chancery Court of the Second Judicial District of Bolivar County, Mississippi, had subject matter jurisdiction over Perry's Petition.



As will be seen in more detail hereinafter, the Petition filed herein by Perry, and as amended by the later Motion to Dismiss Anticipated Pleadings and Motion for Summary Judgment, clearly gave the Chancery Court subject matter jurisdiction.

### **ARGUMENT**

Chancery Court is the appropriate court to hear this matter where: 1) the Defendant raised equitable defenses and arguments to Perry's legal title of the deed; and 2) the parties tried equitable issues by express or implied consent under MRCP 15.

In §159 of the Mississippi Constitution the grant of jurisdiction for the Chancery Court of Mississippi is as follows:

The Chancery Court shall have full jurisdiction of the following matters and cases, viz.:

- (a) All matters in equity;
- (b) Divorce and alimony;
- (c) Matters testamentary and of administration;
- (d) Minor's business;
- (e) Cases of idiocy, lunacy, and persons of unsound mind;
- (f) All cases of which the said court had jurisdiction under the laws in force when this Constitution is put in operation.

Furthermore, in §160 of the Mississippi Constitution, the additional jurisdiction of the Chancery Court is set forth as follows:

And in addition to the jurisdiction heretofore exercised by the chancery court in suits to try title and to cancel deeds and other clouds upon title to real estate, it shall have jurisdiction in such cases to decree possession, and to displace possession; to decree rents and compensation for improvements and taxes; and in all cases where said court heretofore exercised jurisdiction, auxiliary to courts of common law, it may exercise such

jurisdiction to grant the relief sought, although the legal remedy may not have been exhausted or the legal title established by a suit at law.

§147 of the Mississippi Constitution states as follows:

No judgment or decree in any chancery or circuit court rendered in a civil case shall be reversed or annulled on the ground of want of jurisdiction to render said judgment or decree, from any error or mistake as to whether the cause in which it was rendered was of equity or common-law jurisdiction; but if the Supreme Court shall find error in the proceedings other than as to jurisdiction, and it shall be necessary to remand the case, the Supreme Court may remand it to that court which, in its opinion, can best determine that controversy.

Miss. Code Ann. §9-5-81 addresses Chancery jurisdiction as follows:

The chancery court in addition to the full jurisdiction in all matters and cases expressly conferred upon it by the constitution shall have jurisdiction of all cases transferred to it by the circuit court or remanded to it by the supreme court; and such further jurisdiction, as is, in this chapter or elsewhere, provided by law.

Insofar as the statutes addressing appellate reversal and remand, §11-3-9- of the Mississippi Code, reads as follows:

A judgment or decree in any chancery or circuit court rendered in a civil case, shall not be reversed or annulled on account of want of jurisdiction to render the judgment or decree.

Here, it is clear that Chancery has jurisdiction of the defenses stated in open court by Wiggins and his attorneys, regarding the equitable defenses to the execution of December 18, 2000, deed. It is further clear that pursuant to §160 of the Mississippi Constitution, Chancery has jurisdiction over the cancellation of deeds, and it has jurisdiction in such cases to decree possession. That is exactly what Perry anticipated in this case. It is exactly why

Perry filed this matter in Chancery Court. Perry anticipated that Wiggins would challenge the validity of the December 18, 2000, deed, based on equitable defenses. Rather than going through the useless motion of filing an eviction action in Justice or County Court, Perry brought the case to the Court which could afford complete relief to all parties by both ruling upon the equitable claims of Wiggins and the legal title and possessory claims of Perry, and the equitable relief sought by Perry.

Moreover, §147 of the Mississippi Constitution makes it clear that on appeal, (for issues other than jurisdiction), the Supreme Court can remand a cause to either the Circuit or Chancery Court, whichever is best equipped to hear the controversy. Here, the equitable relief sought by Perry as well as the claims and defenses of Wiggins make Chancery exactly the correct forum in which this case should have proceeded, in the first instance.

In Hudson v. Bank of Edwards, 469 So.2d. 1234 (Miss. 1985) the Supreme Court (in reversing the Circuit Court of Hinds County's ruling that the Bank of Edwards was entitled to summary judgment and possession of certain real property) remanded the case back for further proceedings before the Chancery Court, as the proper forum. Factually, the Bank of Edwards held legal title, and sought to eject Hudson, who had equitable defenses to the legal ejectment action. The Supreme Court held there were disputed material facts as to whether the Bank of Edwards had a right to maintain the ejectment action, and therefore remanded.

Insofar as jurisdiction, the Mississippi Supreme Court stated the following:

As this case must be reversed for the improvident granting of a summary judgment, we are of the opinion that the Chancery Court of Hinds County, Mississippi, would be the proper forum

to try the ejectment and at the same time allow the appellant to enjoy the benefit of raising equitable defenses and receiving such relief as equity may grant. 469 So.2d. 1240

Here, it would be a total waste of judicial economy, and the parties' time and expense, for this matter to have first been brought in a law court as an ejectment, when the defendant (Wiggins) raised equitable defenses and arguments to Perry's legal title as received in the December 15, 2000, deed. Thus, this matter was brought in the correct forum in the first instance.

See also: Johnson v. Hinds County, 524 So.2d 947, 952-953 (Miss. 1988) ["Claims regarding title, possession and use of land are well within the chancery court subject matter jurisdiction.".... "This case is further subject to chancery court subject matter jurisdiction by virtue of Hinds County's prayer for the equitable relief of injunction."... "Also, if any aspect of the case lay within its subject matter jurisdiction, the chancery court had authority to hear and adjudge any non-chancery pure law claims via pendant jurisdiction."]

Pursuant to MRCP 15: "When issues not raised by the pleadings are tried by expressed or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment, but failure to so amend does not affect the result of the trial of these issues." Of course, pursuant to Rule 15 the Court is to freely and liberally grant amendments to the pleadings in order that they conform to the evidence.

Here, Wiggins was duly put on notice of the equitable issues in this case as early as November 2004 in the Motion to Dismiss Anticipated Pleadings, and then later in July in 2005 when the Motion for Summary Judgment was filed. The original Petition was thus amended by these later pleadings, and the equitable issues therein were tried by the consent of all parties in the Summary Judgment. Hence, Wiggins' suggestion that this Court did not have jurisdiction because the initial Petition did not set forth all the anticipated equitable defenses of Wiggins, must fail. In addition to being on notice of Perry's claims for equitable relief (injunction), Wiggins was clearly on notice by pleading of these additional equitable issues as early as November of 2004, and then again in July of 2005.

After Perry filed suit in October of 2004, Wiggins appeared in open court with his attorney, the Honorable Sarah Jubb and stated his case regarding his claimed equitable defenses to the Court. Thereafter, the Honorable Bryan Petty represented Mr. Wiggins, and appeared in Court by telephone conference call in defending a Motion for Summary Judgment filed by Perry.

After the Summary Judgment, on December 9, 2005, new counsel appeared for Wiggins (the Honorable Charles E. Webster).

In ruling that it had jurisdiction, the Chancery Court of Bolivar County correctly held that Perry's original Petition was modified by the expressed and implied consent of both Perry and Wiggins, due to the fact that neither party opposed the Chancery Court's hearing of the equitable issues as set forth in Perry's Motion to Dismiss Anticipated Pleadings on November 17, 2004, and Motion for Summary Judgment on July 13, 2005. The Mississippi

authorities of Marr v. Adair, 841 So.2d 1195 (Ct. App. Miss. 2003) and Pearson v. Parsons, 541 So.2d 447 (Miss. 1989) are exactly on point, and hold that initial pleadings can be amended during the course of litigation to support subject matter jurisdiction.

In Marr v. Adair, *supra*, the Court of Appeals held that in an Uniform Child Custody Jurisdiction Act case, the petitioners' failure to attach the necessary affidavit was jurisdictional, but the failure to do so, was cured by timely amendment of the complaint—thus, allowing the court to proceed on proper jurisdiction. Moreover, in Pearson v. Parsons, *supra*, the Supreme Court of Mississippi, affirmed a special tribunal sitting for the purpose of an election contest. The respondent to the contest had argued that failure to have the necessary attorney's certificate attached to the contest voided the court's jurisdiction. The Mississippi Supreme Court held that under MRCP 15 amendments are allowed, and relate back to the original pleading, thus curing the jurisdictional challenge.

Also, in the Alabama case of CSX Transportation, Inc. v. Owens, 533 So.2d 613 (Ct. App. Ala. 1987), the Court of Appeals of Alabama granted mandamus against the trial judge who abused his discretion in not allowing an amended complaint to relate back to the time of the original pleading, whereby the jurisdictional amount was increased in order to come within the jurisdiction of the court.

Federal authorities are unanimous that once the initial complaint is amended, then subject matter jurisdiction is determined by the complaint as amended. *See: Wellness Community - National v. Wellness House*, 70F3rd. 46, (7th Cir. 1995); Young v. City of Mt. Ranier, 238F3rd 567 (4th Cir. 2001).

Thus, in the instant case the Chancery Court of Bolivar County clearly had subject matter jurisdiction due to the initial Petition (which requested injunctive relief) being amended by the expressed and implied consent of both parties due to the filing of motions by Perry which contained equitable matters, which were unopposed by Wiggins. It must be remembered that at all times during this litigation, Wiggins was represented by counsel. See Paragraph 2 of Findings of Fact in Judgment of February 8, 2006. R.113.

### CONCLUSION

Here, Perry sought the jurisdiction of the Chancery Court in order to gain possession of land which was wrongfully denied him. Wiggins has cited no authority, and there is none, that exclusive jurisdiction of actions to gain possession of land lie in eviction actions in justice or county court. To the contrary, the Chancery Court of Bolivar County, Mississippi, had subject matter jurisdiction both in the initial Petition as filed, and as later amended by the subsequent Motions filed by Perry.

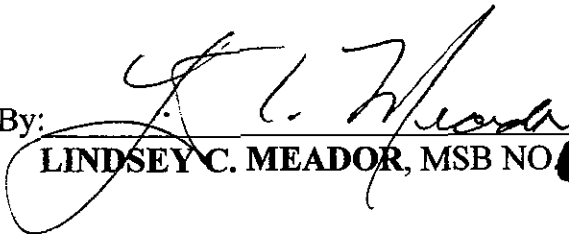
Wiggins, who clearly slept on his rights and was dilatory in asserting his alleged equitable defenses, simply seeks to raise a jurisdictional defense in order to attempt to cure what in reality is his lack of timely response to the Petition and Motions filed against him.

The Chancery Court clearly had jurisdiction over the matter brought by Perry to gain possession of land. Wiggins' jurisdictional attack is really a masquerade by Wiggins who attempts to cast his effort to seek relief from his late and untimely responses in the mold of a jurisdictional question.

Wiggins' appeal should be dismissed, the Chancery Court's Final Judgment affirmed,  
and all costs taxed to Wiggins.

RESPECTFULLY SUBMITTED on this the 5<sup>th</sup> day of January, 2007.

**BILLY RAY PERRY**

By:   
**LINDSEY C. MEADOR, MSB NO [REDACTED]**

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**CERTIFICATE OF SERVICE**

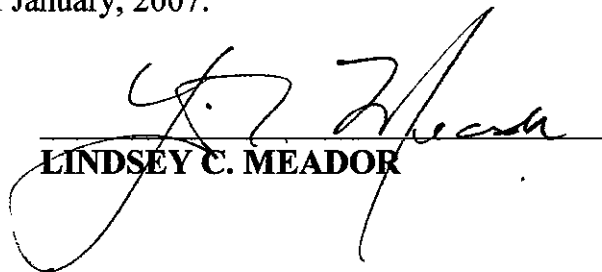
I, Lindsey C. Meador, do hereby certify that I have this day mailed by regular United States mail, a true and correct copy of the above and foregoing Brief of Appellee to the following:

Honorable Christopher E. Kittell  
Gresham & Kittell  
P.O. Box 760  
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Facsimile: 662-627-5530



Honorable William G. Willard, Jr.  
Chancellor  
Eleventh Chancery Court District  
P.O. Box 22  
Clarksdale, MS 38614

**SO CERTIFIED** on this the 5<sup>th</sup> day of January, 2007.

  
LINDSEY C. MEADOR