

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI  
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**SUPREME COURT NO. 2007-CP-01518  
CONSOLIDATED WITH 2007-CP-01516**

**JAMES E. PRUITT AND  
KARLOTTA PRUITT**

**APPELLANTS**

**VERSUS**

**THE ZONING BOARD OF THE CITY OF  
LAUREL, MISSISSIPPI, PLANNING  
COMMISSION AND THE CITY COUNCIL  
OF LAUREL, MISSISSIPPI**

**APPELLEE**

**BRIEF OF APPELLEE**

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**ON APPEAL FROM THE CIRCUIT COURT OF THE  
SECOND JUDICIAL DISTRICT OF JONES COUNTY, MISSISSIPPI**

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**DAVID M. RATCLIFF  
525 CENTRAL AVENUE, STE 1  
POST OFFICE BOX 706  
LAUREL, MISSISSIPPI 39441  
TELEPHONE: (601)425-2303  
FACSIMILE: (601)426-6728**

**ATTORNEY FOR APPELLEE**

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record for Appellee, the Zoning Board of the City of Laurel, Mississippi, Planning Commission and the City Council of Laurel, Mississippi, 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 Court may evaluate possible disqualification or refusal.

1. The Zoning Board of the City of Laurel, Mississippi, Planning Commission and the City Council of Laurel, Mississippi
2. James E. Pruitt and Karlotta Pruitt
3. David M. Ratcliff, Attorney for Appellee
4. The Honorable Billy Joe Landrum, Circuit Court Judge, Second Judicial District, Jones County, Mississippi.

This the 16 day of January, 2008.

  
**DAVID M. RATCLIFF**, Counsel for Appellee

**TABLE OF CONTENTS**

|   |     |
|---|-----|
| CERTIFICATE OF INTERESTED PERSONS ..... | i   |
| TABLE OF CONTENTS .....                 | ii  |
| TABLE OF AUTHORITIES .....              | iii |
| FACTS .....                             | 1   |
| ARGUMENT AND LAW .....                  | 1-3 |
| CONCLUSION .....                        | 3   |
| CERTIFICATE OF SERVICE .....            | 4   |
| ADDENDUM                                |     |

**TABLE OF AUTHORITIES**

|  |     |
|--|-----|
| §11-51-75 Miss Code of 1972 as Annotated and Amended                       | 1,2 |
| <i>Bowen v. DeSoto County Board of Supervisors</i> 852 So2d 21 (Miss 2003) | 1,2 |
| <i>Moore v. Sanders</i> 569 So2d 1148, 1150 (Miss 1990)                    | 2   |
| <i>Newell v. Jones County</i> 731 So2d 580 (Miss 1999)                     | 1,2 |

## **FACTS**

On May 3, 2007 Appellants filed a document entitled Plaintiffs' Complaint and a document entitled Motion in the Circuit Court of the Second Judicial District of Jones County, Mississippi, which was given Cause Number 2007-40-CV5 by the Clerk.

Both of the foregoing documents appear to be an attempt to appeal an unfavorable (to Appellants) Zoning ruling finally denied by Resolution of the City Council of the City of Laurel on April 17, 2007.

On July 11, 2007 Appellants filed a document entitled Notice of Intent and a document entitled Appeal in the Circuit Court of the Second Judicial District of Jones County, Mississippi, which was given Cause Number 2007-73-CV7 by the Clerk.

Both of the foregoing documents appear to be an attempt to appeal an unfavorable (to Appellants) Zoning ruling finally denied by Resolution of the City Council of the City of Laurel on July 3, 2007.

## **ARGUMENT AND LAW**

As stated Appellants failed to timely file their attempted Appeal pursuant to §11-51-75 of the Mississippi Code of 1972 as Annotated and Amended, which exclusively governs such grievances and requires the Notice of Appeal to be filed within ten (10) days from the date of adjournment of the City Council meeting where final denial was made which was April 17, 2007. Appellant also failed to file a Bill of Exceptions as required by said statute.

This Court most recently discussed the issue of timely filing in *Bowen v. DeSoto County Board of Supervisors* 852 So2d 21 (Miss 2003) where it stated citing *Newell v. Jones County* 731

So2d 580 (Miss 1999), “in *Newell* this Court said: The statutes ten (10) day time limit in which to appeal the decision of the Board is both mandatory and jurisdictional. *Moore v. Sanders* 569 So2d 1148, 1150 (Miss 1990). Where an appeal is not perfected within the time constraints no jurisdiction is conferred on the appellate court, and the untimely action should be dismissed.”

In the *Bowen* case the Court did distinguish regarding the Notice of Appeal and the filing of the Bill of Exceptions basically stating that the Notice must be filed within ten (10) days, but that the Bill of Exceptions could be filed within a reasonable time.

The failure of Appellants to file their Notice of Appeal within ten (10) days in Cause Number 2007-40-CV5 requires dismissal of this appeal just as it was dismissed in the lower Court in the opinion of Appellee.

In Cause Number 2007-73-CV7 the facts are slightly different in that the Appellants sought the same result from the City of Laurel, Mississippi but filed a document which was appealed on July 11, 2007 following final denial by the City Council on July 3, 2007. The Circuit Court dismissed Cause Number 2007-73-CV7 for failure to comply with §11-51-75 of the Mississippi Code of 1972 as Annotated and Amended, on July 31, 2007 because of failure to file a Bill of Exceptions.

Although the Court did not provide an opinion it is clear from the pleadings filed by Appellants (Motion to Strike Defendant’s Motion to Dismiss with Prejudice Plaintiff’s Appeal on the Record in Cause Number 2007-73CV7 and similar Motions filed in Cause Number 2007-40-CV5), that Appellants intended to “try” this case on August 20, 2007 pursuant to Order of the Court without having filed a Bill of Exceptions, so the Court reasoned that Appellants had no intention of ever filing a Bill of Exceptions. It is also clear from examining those Motions stated

above in Cause Number 2007-40-CV5, that Appellants believed incorrectly that the City was required to prepare and file a Bill of Exceptions for Appellants which under §11-51-75 of the Mississippi Code of 1972 as Annotated and Amended, is a requirement of Appellants. The only requirement the Appellee had was to accommodate Appellants by allowing them access and copying of its records regarding the subject matter of the Appeal and once Appellants prepared same, in the form of a Bill of Exceptions, to have the Council President sign if it was correct. All of this Appellee was ready to do if Appellant had proceeded properly. Appellants did not proceed properly pursuant to Statute requiring perfection of its appeal by filing its Bill of Exceptions and the Circuit Court properly dismissed Cause Number 2007-73-CV7.

### CONCLUSION

In conclusion a cursory examination of the pleadings filed by Appellants will show that the paramount reason for dismissal by the trial Court in both cases was the failure of Appellants to comply with the requirements of §11-51-75 of the Mississippi Code of 1972 as Annotated and Amended. Further, it is obvious that Appellants mistakenly attempted to apply the rules regarding appeals from lower courts as opposed to following §11-51-75 which governs appeals by persons aggrieved over decisions of municipalities. For all of the foregoing reason Appellants' appeal to this Court should be denied and the decision of the Circuit Court of the Second Judicial District of Jones County, Mississippi should be upheld.

RESPECTFULLY SUBMITTED,  
The Zoning Board of the City of Laurel  
Mississippi, Planning Commission and  
The City Council for the City of Laurel,  
Mississippi

By:   
DAVID M. RATCLIFF, City Attorney for  
the City of Laurel, Mississippi

**CERTIFICATE OF SERVICE**

I, David M. Ratcliff, Attorney at Law, do hereby certify that I have this date, mailed by United States First Class Mail, a true and correct copy of the above and foregoing *Brief of*


*Appellee* to:

James E. Pruitt, *pro se*  
622 South Magnolia Street  
Laurel, Mississippi 39440

Honorable Billie Joe Landrum, Circuit Court Judge  
Post Office Box 685  
Laurel, Mississippi 39441-0685

This the 16 day of January, 2008.

  
\_\_\_\_\_  
DAVID M. RATCLIFF

**DAVID M. RATCLIFF**   
Attorney for the Appellee  
525 Central Avenue, Suite 1  
Post Office Box 706  
Laurel, Mississippi 39441-0706  
Telephone: (601) 425-2303  
Facsimile: (601) 426-6728