THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ISSAQUENA WARREN COUNTIES LAND CO. LLC; GARY K. BLAKENEY; EARNEST K. BLAKENEY AND ROSE C. BLAKENEY; ROBERT D. AINSWORTH; PAM HALEY; KEITH HAWSEY; TOMMY L. THRASH; JOSH L. THRASH; MIKE SUTTON; MICHAEL R. MCTURNER AND DONNA M. MCTURNER; ERVIN RAY AND FAY RAY; GARY RAY; HUGH J. PARKER AND CYNTHIA B. PARKER; JOEY HAVENS; AND MARTY ELROD **APPELLANTS**

VS. **CAUSE NO. 2007-IA-02054-SCT**

WARREN COUNTY, MISSISSIPPI **APPELLEE**

ON INTERLOCUTORY APPEAL FROM THE CHANCERY COURT OF WARREN COUNTY, MISSISSIPPI

ORAL ARGUMENT NOT REQUESTED

REPLY BRIEF FOR APPELLANTS

SUBMITTED BY:

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In its brief, Warren County argues that the trial court was correct in transferring the present action seeking only declaratory and injunctive relief with regard to the threatened enforcement of certain land use ordinances from chancery court to circuit court. Warren County makes three basic arguments in support of the aforementioned ruling. First, Warren County argues that Miss. R. Civ. P. 57 entitles it to a jury determination with regard to the declaratory relief sought by Issaquena and Warren in the present action and that a jury is only available in circuit court. Second, Warren County argues that its claim for damages, asserted in a lawsuit it filed six days after the present action was filed (2007 Circuit Court action) precludes application of the priority jurisdiction rule. Alternatively, Warren County argues that this Court should not enforce the priority jurisdiction rule in this case because to do so, would deprive Warren County of its right to a jury under Rule 57 and for its damages claim asserted in the 2007 Circuit Court action. Clearly, Warren County's arguments must fail, and the trial court must be reversed, if Warren County is not entitled to a jury in the present dispute.

In the following discussion (in conjunction with the initial brief filed in this matter), Issaquena and Warren demonstrates that the arguments raised by Warren County are utterly without merit. Specifically, Warren County's argument that Rule 57 creates an independent entitlement to a jury trial is contrary to the language utilized in the rule and this Court's precedent. Further, Issaquena and Warren will demonstrate that the damage claim asserted by Warren County is not legally cognizable and, as such, does not support the trial court's decision to transfer this case to the Circuit Court of Warren County. Finally, even if Warren County's damage claim was legitimate, this would not warrant the disregard of the priority jurisdiction

rule. In light of the same, the ruling of the Chancery Court of Warren County should be reversed and this case remanded for further proceedings in that forum.

ARGUMENT

In its brief, Warren County argues that the chancery court was correct in transferring the present case to circuit court because it was entitled to a jury in the present dispute. First, Warren County argues that the declaratory relief sought by Issaquena and Warren pursuant to Miss. R. Civ. P. 57 in the present action requires a jury determination of the issues presented in this case. Second, Warren County argues that, because it has sought damages in a parallel action pending in the Circuit Court of Warren regarding the same subject matter, the entire controversy should be heard by the circuit court despite the fact that the present case was filed first. Both arguments are unsupported by applicable law.

I. THE CHANCERY COURT HAS JURISDICTION OVER THE ACTION FILED IN THIS CASE

In the instant action, Issaquena and Warren's complaint ***only*** sought declaratory and injunctive relief in connection with land use ordinances. (Rec. 4-14, 21-31) Warren County argues that because declaratory relief was sought, Miss. R. Civ. P. 57 requires that this case be tried before a jury in circuit court. This argument re-writes Rule 57, ignores the historical application of Rule 57 and is contrary to the precedent of this Court. Further, this argument utterly ignores the equitable nature of this suit in favor of a formality which elevates form over substance. As such, Warren County's arguments should be rejected and this case should be reversed and remanded for further proceedings in the Chancery Court of Warren County,

A. Miss. R. Civ. P. 57 Does Not Create the Right to a Jury

1. The mere mention of a jury is not the equivalent of creating a right to a jury in actions seeking declaratory relief.

Warren County argues that it has a "right" to a jury under Miss. R. Civ. P. 57. The obvious problem with this argument is that the plain-language of Rule 57 does not support it.

Warren County apparently relies on the following language included in Rule 57(a): "The procedure for obtaining a declaratory judgment shall be in accordance with these rules, and the right to trial by jury ***may*** be demanded ***under the circumstances and in the manner provided in Rules 38 and 39."*** Miss. R. Civ. P. 57(a)(emphasis added). In order to determine the validity of this reliance, it is necessary to examine the referenced rules.

As an initial matter, it must be noted that Mississippi has not adopted Rule 39. In fact, the heading of Rule 39 is as follows: TRIAL BY JURY OR BY THE COURT [OMITTED]. Clearly Rule 39 does not support Warren County's position.

Miss. R. Civ. P. 38 provides that, under the rules, the right to a jury trial "***as declared by the Constitution or any statute of the State of Mississippi***" is preserved under the rules. Miss. R. Civ. P. 38(a). The Comment to Rule 38 makes clear that this rule does not create the right to a jury where it would not otherwise exist by acknowledging that "Mississippi Rule 38 merely recites that a party's right to a jury trial is unabridged by these rules." See, Miss. R. Civ. P. 38, Comment. Rule 38 simply makes clear that the rule does not preclude trial by jury where, under applicable Mississippi law, the litigant would otherwise be entitled to a jury.

In no way does the language or the comment to Rule 38 create an independent right to a jury based solely on the application of the rules. This interpretation is supported by Rule 82(a) which states that "[t]hese rules shall not be construed to extend or limit the jurisdiction of the courts of Mississippi." Furthermore, "[w]hat was an action at law before these rules is still an action founded on legal principles and ***what was a bill of equity before these rules is still a civil action founded on principles of equity***." Miss. R. Civ. P. 2 Comment. (emphasis added).

Warren County's argument is simply not supported by the language utilized in the Mississippi Rules of Civil Procedure.

2. Warren County's interpretation is inconsistent with Rule 57(b)

Warren County's argument in this appeal and in the proceedings below focuses on the mention of a jury in Rule 57(a). Warren County takes the position that **all** actions for declaratory relief under Rule 57 invoke the right to a trial by jury. This interpretation is inconsistent with the language utilized in Rule 57(b) and significant precedent from this Court recognizing that declaratory actions do not necessarily require and, in certain cases, are ***not*** to be decided by a jury.

Rule 57(b) provides as follows:

> **(b) When Available.**
>
> (1) Any person interested under a ***deed, will***, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, ***municipal ordinance***, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise, and obtain a declaration of rights, status or other legal relations thereunder.
>
> (2) A contract may be construed either before or after there has been a breach thereof. ***Where an insurer has denied or indicated that it may deny that a contract covers a party's claim against an insured, that party may seek a declaratory judgment construing the contract to cover the claim***.
>
> (3) Any person interested as or through an executor, administrator, trustee guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust in the administration of a trust, or of the ***estate of a decedent, an infant, insolvent, or person under a legal disability, may have a declaration of rights or legal relations in respect thereto***:
>
> (A) to ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or,
>
> (B) to direct the executors, administrators, or trustees, to do or abstain from doing any particular act in their fiduciary capacity; or,
>
> (C) to determine any question ***arising in the administration of the estate or trust***, including questions of construction of wills and other writings.

Miss. R. Civ. P. 57(b)(emphasis added).

Rule 57(b) provides for the remedy of declaratory relief in a wide variety of actions that are clearly within the jurisdiction of the Chancery Court. *See, Trustmark National Bank v. Johnson*, 865 So. 2d 1148, 1151 (Miss. 2004)(holding that issues related to the administration of an estate should be determined by the Chancery Court); *Johnson v. Hinds County*, 524 So. 2d 947, 952 (Miss. 1988)(holding that claims relating to title of land and the enforcement of land-use ordinances are within the jurisdiction of the Chancery Court); *Riley v. Moreland*, 537 So. 2d 1348, 1351 (Miss. 1989)(holding that Chancery Court of Lee County had exclusive jurisdiction over declaratory action relating to enforceability of contract against minor's estate)("[s]ubject matter jurisdiction turns on the type of case at issue, and it is against this backdrop that we consider the arguments."). Indeed, Chancellors routinely decide actions seeking declaratory relief. *See, In re Validation of $7,800,000 Combined Utility System Revenue Bond, Gautier Utility Dist., Jackson County, Dated as of Date of Delivery*, 465 So. 2d 1003, 1015 (Miss. 1985)(declaratory action in chancery court seeking a declaration regarding the propriety of municipal bond contested by citizens); *Chapman v. Thornhill*, 802 So. 2d 149, 152 (Miss. Ct App. 2001)(holding declaratory relief appropriate in land use dispute); *Marx v. Truck Renting and Leasing Ass'n Inc.*, 520 So. 2d 1333, 1341 (Miss. 1987)(holding that chancery court had jurisdiction to grant declaratory and injunctive relief regarding alleged wrongful taxation).

Further, this Court has expressly recognized that certain Rule 57 declaratory actions ***must*** be heard by a judge and cannot be heard by a jury. Specifically, declaratory actions reviewing the question of coverage to third-parties "do not involve the jury . . ." *Poindexter v. Southern United Fire Ins. Co.* 838 So. 2d 964, 967 (Miss. 2003). In *Poindexter*, this Court recognized that a Rule 57 action seeking declaratory relief was available "to bring the insurer into a lawsuit and have the coverage question resolved by the judge." *Id.* However, this Court was clear that such an action did "not mean that a party can mention insurance before a jury, as

that rule still holds in this state." *Id. See also, Lewis v. Allstate Ins. Co.*, 730 So. 2d 65, 71 (Miss.1998)(citing Miss. R. Civ. P. 57)(recognizing that a plaintiff may ask for a declaratory judgment either as his sole relief or in addition or auxiliary to other relief but that "such reviews of insurance contracts do not involve the jury and are often cursory."). This Court has held that it was reversible error to allow the jury to consider a claim for declaratory relief related to insurance rather than bifurcating the trial so that the judge could determine the issue of coverage. *Capital City Ins. Co. v. G.B. "Boots" Smith Corp.*, 889 So. 2d 505, 510 (Miss. 2004)("if a question of insurance coverage exists, a party should be able to bring the insurer into a lawsuit and have the coverage question resolved by the judge.")(emphasis in original)

Warren County's argument that Rule 57(a) guarantees a jury in **all** actions for declaratory relief is simply not supported by the rules of civil procedure, the routine application of Rule 57 in chancery court and this Court's precedent. As such, this argument must be rejected.

3. The meaning of "jurisdictionally neutral"

In its brief, Warren County complains that it does not understand what Issaquena and Warren means in its argument that Rule 57 is "jurisdictionally neutral." *See Brief for Appellee at p. 7.* Warren County argues that this Court's holding that Rule 57 is "jurisdictionally neutral" means that any action for declaratory relief can be transferred to circuit court as it is a court of general jurisdiction. Although not clear in its brief, Warren County seems to rely on this Court's holdings in *Tillotson v. Anders*, 551 So. 2d 212 (Miss. 1989) and *Burnette v. Hartford Underwriters*, 770 So. 2d 948 (Miss. 2000) to support its interpretation. Neither case supports Warren County's argument.

Tillotson involved an action filed by the former Circuit Clerk for Adams County, Mississippi (Anders) against a newspaper and two reporters. *Tillotson*, 551 So. 2d at 212-13.

The chancery court action filed by Anders accused the newspaper of libel and slander and sought actual and punitive damages in excess of $8,000,000.00. *Id.* at 213. Anders primarily argued that jurisdiction in chancery court was appropriate because he sought a "complex accounting . . ." *Id.* The Court rejected this argument finding that the accounting sought was not between Anders and newspaper but rather, was merely an attempt to disguise an action at law as a matter in equity. *Id.* at 213-14 Indeed, this Court found that the substance of the case was a tort action for libel. *Id.* Anders also argued that chancery jurisdiction was appropriate because he sought declaratory relief pursuant to Miss. R. Civ. P. 57. The Court rejected this argument as well finding Rule 57 to be "jurisdictionally neutral." *Id.* at 214. As such, Rule 57 could not be used to turn an action at law into an action at equity.

In no way can the *Tillotson* ruling be construed as holding that ***every action*** for declaratory relief to be outside the jurisdiction of the chancery court. Rather, the meaning of "jurisdictionally neutral" as used by this Court in *Tillotson* must mean that the nature of the underlying action governs subject matter jurisdiction of a claim for declaratory relief.

Warren County cites *Burnette* for the proposition that the right to a jury determines subject matter jurisdiction as between circuit and chancery court. *See, Brief of Appellee at p. 9.* As with *Tillotson*, the problem with this reliance is the fact that the right to a jury in *Burnette* arose from the nature of the underlying action, not from the demand for declaratory relief or by operation of Rule 57.

Burnette was an action for declaratory relief, actual and punitive damages arising from a breach of contract alleged by insureds (the Burnettes) against their insurance company. *Burnette.* 770 So. 2d at 950. The Burnettes originally filed the action in chancery court, seeking declaratory relief. *Id.* at 952. Later, they decided to seek a transfer of the case to circuit court and the insurance company opposed the transfer on the grounds that chancery court was

appropriate because declaratory relief was sought. *Id.* The court held that a request for declaratory relief did "not change the nature of the case . . ." for the purpose of determining subject matter jurisdiction. *Id.* In reaching this conclusion, this court stated:

> The short answer is that our law's authorization of the declaratory judgment procedure in Rule 57, Miss. R. Civ. P., is ***jurisdictionally neutral***. Rule 57 empowers the trial court to grant ***a procedural remedy*** not thought available in our practice prior to January 1, 1982. That ***new remedy may be sought only in a court of otherwise competent jurisdiction***. Indeed, ***nothing*** in the Mississippi Rules of Civil Procedure ***may be construed to extend or limit the subject-matter jurisdiction of our trial courts***.

Burnette, 770 So. 2d at 952 (emphasis added). Simply put, because the underlying nature of the case was breach of contract, a matter at law, the chancery court did not have jurisdiction to grant declaratory relief.

Neither *Tillotson* nor *Burnette* can be reasonably read to stand for the proposition that a request for declaratory relief automatically requires jury consideration and thus takes the controversy outside chancery jurisdiction. Indeed, this would require that declaratory action regarding matters testamentary, family law issues and matters related to the title of real property be decided in circuit court despite the exclusive jurisdiction of the chancery court over such matters. Miss. Consti. Art. 6 § 159.

This Court has consistently held that Rule 57 is "jurisdictionally neutral." *See*, *RAS Family Partners*, 968 So. 2d at 929 ("The request for declaratory judgment does not affect our analysis as declaratory judgments are 'jurisdictionally neutral.'"); *Burnette,* 770 So. 2d at 952; *Tillotson*, 551 So. 2d at 214. This means that subject matter jurisdiction is not determined by the declaratory remedy created by Rule 57, but instead, by a determination of the nature of the underlying dispute.

B. The Fundamental Substance of the Present Dispute is Equitable

In *Trustmark National Bank v. Johnson*, 865 So. 2d 1148, 1151 (Miss. 2004), this Court

held that in order to determine whether an action should be in circuit court or chancery court, the fundamental substance of the claim should be determined, regardless of how the allegations are pled. The Plaintiffs in *Trustmark* pled negligence and legal remedies, however, the fundamental substance of the claim was equitable because the nature of the action was the administration of an estate. *Id.* at 1151-1152. This Court stated that "[a]lthough, the Plaintiffs employ the language of negligence and legal remedy, the fundamental substance of their claim is testamentary and equitable." *Id.* at 1151. Thus, this Court ordered the matter to be transferred to the chancery court. *Id.* at 1150.

Likewise in *City of Starkville v. 4-County Electric Power Assn'*, 909 So. 2d 1094 (Miss. 2005), this Court looked to the nature of the claim in determining whether or not the chancellor erred in denial of a motion to transfer. In *4-County*, the City of Starkville filed an action in the Chancery Court of Oktibbeha County seeking specific performance of a contract and seeking ***declaratory and injunctive relief*** and ***damages***. *4-County*, 909 So. 2d at 1099. After protracted litigation, the City decided that the action was actually a breach of contract suit and as such, should be transferred to circuit court for a jury trial. *Id.* at 1099, 1101. In upholding the Chancellor's denial of the City's motion for transfer, this Court looked to its previous holding in *Trustmark*:

> In *Trustmark,* we held that the circuit court erred in denying a motion to transfer to chancery court. In so doing, ***we readily acknowledged that most of our recently decided cases on the issue of transfer involved the question of whether a case commenced in chancery court should have been transferred to circuit court***. We noted in *Trustmark* that the circuit court complaint, while asserting claims of negligence, breach of contract, breach of fiduciary duty and gross negligence, actually focused on the administration of a trust which had been under "the exclusive jurisdiction of the [chancery court] and has been since its inception." We likewise stated in *Trustmark:*
>
> > The Plaintiffs counter that they seek legal action rather than equitable remedies and that subject matter jurisdiction is proper in the circuit court; however, the Plaintiffs concede that ***when determining the true nature of the claim, one must look at the***

> ***substance, and not the form, of the claim in order to determine whether the claim is legal or equitable.*** . . . As Trustmark correctly asserts, "[a]lthough, the Plaintiffs employ the language of negligence and legal remedy, the fundamental substance of their claim is testamentary and equitable."

Id. at 1101-02 (emphasis added)(internal citations omitted). In upholding the chancellor's denial of the motion to transfer, this court noted that the chancellor did exactly what the *Trustmark* case compelled, he determined the true substance of the action as either legal or equitable based upon the allegations of the complaint. *Id.* at 1102, n.6.

It is beyond question that the remedy of injunction is a "matter in equity" and therefore, within the jurisdiction of the chancery court. In *Leaf River Forest Products, Inc. v. Deakle*, 661 So. 2d 188, 193 (Miss. 1995) this Court held that a prayer for injunctive relief" is a subject over which the chancery court may assert jurisdiction." Other than declaratory relief, the ***only*** relief sought by Issaquena and Warren in the complaint initiating this action is injunctive relief. (Rec. 4)

Further, in a case involving alleged violations of a subdivision ordinance, this Court has expressly held that "[c]laims regarding title, possession and ***use of land*** . . ." are within the chancery court's subject matter jurisdiction pursuant to Miss. Const. Art. 6, § 159 as are claims for injunctive relief to abate alleged ordinance violations. *Johnson v. Hinds County*, 524 So. 2d 947, 952 (Miss. 1988)(emphasis added). The declaratory and injunctive relief sought by Issaquena and Warren in the present action is a determination of whether they can be held in violation of certain land use ordinances. Under *Johnson*, the chancery court clearly has jurisdiction to decide these issues. A claim for injunctive relief alone is sufficient basis for finding chancery court jurisdiction. *See*, *Deakle*, 661 So. 2d at 193 (Miss. 1995).

There can be no doubt that the fundamental substance of the action filed by Issaquena and Warren is equitable in nature and therefore, within the exclusive jurisdiction of the Chancery

Court of Warren County. Miss. Consti Art. 6, § 159. Further, this Court's opinion in *4-County* clearly reveals the error of Warren County's argument that a claim for declaratory relief requires transfer to the Circuit Court of Warren County for a jury trial. The court below was misled by this argument and as such, must be reversed.

II. WARREN COUNTY'S CLAIM FOR DAMAGES IN CIRCUIT COURT DOES NOT PROHIBIT APPLICATION OF THE PRIORITY JURISDICTION RULE

In its brief, Warren County did not argue or dispute that the present case was filed six days prior to the action it filed in the 2007 Circuit Court action. *See Brief of Appellee at p. 2.* Likewise, Warren County does not dispute that the present action and the 2007 Circuit Court action involve the same subject matter. (TR 4) Further, Warren County does not argue in its brief that the two do not involve the same parties. Rather, Warren County argues that, as a result of a claim for "damages" asserted in the 2007 Circuit Court action, priority jurisdiction does not apply. Alternatively, Warren County argues that priority jurisdiction should not apply as its application will deprive it of the right to have a jury determine its damage claim and declaratory relief sought in both actions.

For the reasons set forth above, Warren County's argument that a claim for declaratory relief necessarily warrants a jury determination, notwithstanding the fundamental nature of the dispute, is clearly without merit. As such, Warren County's argument must fail if its arguments regarding the claim for damages asserted in the 2007 circuit court action are without merit. This Court should reject Warren County's argument for a number of reasons.

A. Priority Jurisdiction is Determined by Substance Not Form

This Court has identified the priority jurisdiction rule succinctly:

> It is ***fundamental*** that a plaintiff is ***not authorized simply to ignore a prior action and bring a second, independent action on the same state of facts while the original action is pending***. Hence a second action based on the same cause will generally be abated where there is a prior action pending in a court of competent

> jurisdiction within the same state or jurisdictional territory, between the same parties, involving the same or ***substantially the same*** subject matter and cause of action, and in which prior action the rights of the parties may be determined and adjudged.

Harrison County Development Comm'n v. Daniels Real Estate, Inc., 880 So. 2d 272, 276 (Miss. 2004)(reversed on other grounds)(citing *Lee v. Lee,* 232 So. 2d 370, 373 (Miss. 1970))(emphasis added). The same or substantially the same subject matter and cause of action requirement is not literal, rather it looks to whether the competing actions are "***seeking on the one hand, and opposing on the other, the same remedy, and . . . relate to the same question.***" *Scruggs, Millette, Bozemand & Dent, P.A. v. Merkel & Cocke, P.A.*, 804 So. 2d 1000, 1004-5 (Miss. 2001)(emphasis in original). *See also*, *Long v. McKinney*, 897 So. 2d 160, 172 (Miss. 2004).

A fair reading of the complaint filed by Warren County in the 2007 Circuit Court action and the complaint filed in the instant action reveal that both cases seek an adjudication regarding the enforceability of the Warren County Floodplain and Subdivision Ordinances against Issaquena and Warren. *Compare* (Rec. 21-31) *with* (Rec. 88-91) Such a review reveals that the relief requested by Issaquena and Warren in the present case presents a complete bar to any and all forms of relief, whether equitable or legal, requested by Warren County in the 2007 Circuit Court action. Notwithstanding, Warren County argues that because it asserts a claim for "damages," priority jurisdiction does not apply. *See Brief of Appellee at pp. 5-6.* Specifically, Warren County argues, without citation to authority, that "if one of the cases asks for a different remedy, then the time of filing should not be a relevant factor in determining the more appropriate forum."[1] This assertion is simply not supported by applicable law.

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[1] It should be noted that Warren County does not argue that the Chancery Court of Warren County does not have concurrent jurisdiction over the claims asserted in the 2007 Circuit Court action nor could it. A cursory review of that complaint reveals that the fundamental substance of Warren County's claims against Issaquena and Warren in that case are equitable. (Rec 88-91) As Warren County's claim for damages is not cognizable as a matter of law, Warren County should have filed its claim in chancery court in the first instance. *See Trustmark National Bank v. Johnson*, 865 So. 2d 1148 (Miss. 2004); *City of Starkville v. 4-County Electric Power Assn'*, 909 So. 2d 1094 (Miss. 2005).

In *Scruggs*, the first action was filed in the Chancery Court of Jackson County seeking: (1) an accounting for the attorneys' fees received from the "*Scott* litigation" settlements; (2) intentional willful and reckless interference by Merkel & Cocke, and others with a contractual agreement; and (3) a declaration as to a related agreement for attorneys' fees. *Scruggs*, 804 So. 2d at 1005. The second action was filed in the County Court of Coahoma County and sought to interplead certain funds representing attorneys' fees and an order absolving the interpleader of further obligation. *Id.* Notwithstanding the differences in the remedies sought, this Court recognized that "both cases address the issues derived from the *Scott* litigation and its disbursement of attorneys' fees from that litigation." *Id.* at 1000. Accordingly, this Court held that, by operation of the priority jurisdiction rule, "***the Coahoma Chancery Court lacked jurisdiction over Merkel & Cocke's interpleader action***." *Id.* at 1006 (emphasis added).

B. *Beggiani* Is Inapplicable to this Case.

Warren County offered little in the way of authority in support of any of the arguments raised in its brief. This was certainly true of Warren County's argument regarding the effect of the priority jurisdiction rule. In support of its argument that this case and the 2007 circuit court action do not involve substantially the same cause of action, Warren County relied solely on this Court's opinion in *Beggiani v. Prante*, 519 So. 2d 1208 (Miss. 1988). *Beggiani* is clearly not applicable to the facts of this case.

In *Beggiani*, the initial action was filed in the Youth Court of Carroll County, Mississippi by the Welfare Department to obtain an adjudication as to whether two babies had been neglected by their mother. *Beggiani*, 519 So. 2d at 1209. This action was brought pursuant to a statute which granted the youth court exclusive jurisdiction over, among other things, the supervision of neglected children. *Id.* at 1210. In the initial proceeding, the Court ordered the

Welfare Department to contact the grandmother of the children, Mrs. Prante, to see if she might be willing to adopt them. *Id.* at 1209.

In the meantime, the children were placed in foster care with the Beggiani family in Hinds County, Mississippi. *Id.* at 1209. The Beggianis fell in love with the children and decided to adopt them. *Id.* In furtherance of that goal, the Beggianis filed a petition for adoption in the Chancery Court of Hinds County pursuant to Mississippi's adoption statute which provided that a petition for adoption may be filed where the "adopting petitioner resides or where the child to be adopted resides . . ." *Id.* at 1210. Subsequently, Mrs. Prante sought custody of the children in the Carroll County action. *Id.* at 1209. The Carroll County Youth Court granted Mrs. Prante's petition for custody while the Hinds County Chancery Court granted the Beggiani's petition for adoption. *Id.* at 1209. On appeal, this Court ruled that the Hinds County Chancery Court had jurisdiction to grant the adoption and that this grant was superior to the mere award of custody by the Carroll County Youth Court. *Id.* at 1213-14.

In its analysis, the Court rejected Mrs. Prante's argument that the Carroll County Youth Court neglect proceeding had priority jurisdiction over the Hinds County Chancery Court adoption proceeding. *Id.* at 1210-11. Initially, this Court noted that priority jurisdiction applies where the two actions are "between the same parties . . ." *Id.* at 1210. As the Beggianis were not parties to the Carroll County Youth Court proceeding, the analysis could have ended here. Notwithstanding, the Court determined that both proceedings were created and governed by statute for different purposes. *Id.* at 1210-11. Specifically, this Court held that "adoption proceedings are entirely separate and distinct statutory proceedings neither connected with nor controlled by prior custody awards of another court." *Id.* at 1211.

Unlike the two cases at issue in *Beggiani*, the relief sought by Issaquena and Warren in the present case would act as a complete bar to the claims asserted by Warren County in the 2007

circuit court action. In short, the two complaints at issue here are mirror images "***seeking on the one hand, and opposing on the other, the same remedy, and . . . relate to the same question.***" *Scruggs*, 804 So. 2d at 1004-5 (emphasis added). As such, *Beggiani* simply does not apply.

C. Warren County's Claim for Damages Does Not Destroy the Subject Matter Jurisdiction of the Chancery Court

Warren County argues that, in addition to the declaratory relief at issue, its claim for damages in the 2007 circuit court action require that this matter be tried before a jury in the Circuit Court of Warren County. This argument cannot be sustained for at least two reasons. First, the fundamental substance of the 2007 circuit court action is, like the present action, equitable and not legal in nature. Second, Warren County's claim for damages is not legally cognizable.

1. The 2007 Circuit Court action is, fundamentally, an action in equity

As discussed above, this Court looks to the "fundamental substance" of a claim to determine whether the case should be heard in chancery court or circuit court. *Trustmark*, 865 So. 2d at 1151. The "fundamental substance" of the claim is determined by an examination of the allegations set forth in the complaint. *4-County*, 909 So. 2d at 1102, n.6.

This Court has expressly held that "[c]laims regarding title, possession and ***use of land*** . . ." are within the chancery court's subject matter jurisdiction pursuant to Miss. Const. Art. 6, § 159 as are claims for injunctive relief to abate alleged ordinance violations. *Johnson*, 524 So. 2d at 952 (emphasis added).

A review of the complaint filed by Warren County in the 2007 Circuit Court action reveals that the fundamental substance of Warren County's claims are equitable. These claims arise out of Issaquena and Warren's use of land and Warren County's allegations that this use violates the Subdivision and/or Floodplain Ordinances. The complaint filed by Warren County

primarily seeks a determination of whether certain ***land use ordinances*** have been violated and an ***injunction*** forcing Issaquena and Warren to comply with these ordinances in the event of violation. (Rec. 88-91) Warren County's claim for damages is derivative of and, to the extent it even states a claim, is completely dependant upon the successful prosecution of its equitable claims. (Rec. 90-91) In short, Warren County's single allegation for damages is clearly ancillary and secondary to the equitable relief sought and does not deprive the Chancery Court of subject matter jurisdiction. (Rec. 90-91) Clearly, the Chancery Court has jurisdiction over the claims raised by Warren County in the 2007 Circuit Court action. *See*, *Trustmark*, 865 So. 2d at 1151.

Indeed, the 2007 Circuit Court action is nothing more than the flip side of the present action. The fundamental substance of both the claims at issue in the present case and the claims raised by Warren County in the 2007 Circuit Court action is equitable. These claims arise from the Plaintiffs' use of land and the Defendants' allegations that this use violates the Subdivision and Floodplain Ordinances. Both parties primarily seek injunctive relief related to the same. The damages claim asserted by Warren County is clearly secondary to and dependant upon the primary relief sought in both the present action and the later-filed 2007 Circuit Court action, *i.e.* a determination as to the enforceability of the land use ordinances at issue and injunctive relief regarding the same. (Rec. 88-91) As such, the "fundamental substance" of both the present action, as well as the 2007 Circuit Court action is equitable, not legal, in nature. *Trustmark*, 865 So. 2d at 1151-1152. Accordingly, these claims should be barred in the chancery court.

Clearly, the claims raised Issaquena and Warren in the present, first-filed action, if successful, will operate as a complete bar to the claims raised by Warren County in the later-filed 2007 Circuit Court action. It is clear that the present action and the later-filed 2007 Circuit Court action involve substantially the same subject matter and cause of action. The priority jurisdiction rule is, therefore, controlling.

2. It is proper to examine the viability of Warren County's claim for damages in determining the issue of subject matter jurisdiction

Warren County argues, in a footnote and without citation to authority, that this Court should not examine the viability of its claim for damages in deciding the merits of its argument. *See Brief of Appellee at p. 5, n.1.* Warren County appears to argue that, simply because it uses the word "damages" in the 2007 Circuit Court action, the chancery jurisdiction has no jurisdiction and Warren County is absolutely entitled to a jury in circuit court. This position is, of course, at odds with this Court's holding in *4-County*. In that case, a claim for damages for breach of contract was not sufficient to outweigh the significant equitable claims set forth in the complaint and did not warrant transfer to circuit court for a jury trial. *4-County*, 909 So. 2d at 1099, 1101-02.

Contrary to Warren County's argument, it is appropriate to examine the viability of its damages claim in order to determine the fundamental substance of the 2007 Circuit Court action. Indeed, in the only case cited by Warren County in support of the argument that its damage claims entitle it to a jury, this Court looked to the viability of certain equitable claims in order to determine subject matter jurisdiction.

Warren County cites *Union National Life Ins. Co. v. Crosby*, 870 So. 2d 1175 (Miss. 2004) in support of its argument that its claim for damages should be decided by a jury in the Circuit Court of Warren County. *See Brief of Appellee at p. 6.* A careful examination of this case, in light of the *Trustmark* analysis discussed at length above, reveals that Warren County's reliance is misplaced.

Crosby involved a fraud and predatory lending case filed by Plaintiffs in the Chancery Court of Covington County, Mississippi. In finding that the Chancery Court did not have jurisdiction, this Court stated that "[a] ***realistic and pragmatic review*** of the complaint leads us

to the conclusion that this is a lawsuit that should be in circuit court, not chancery court." *Crosby*, 870 So. 2d 1182. In reaching this conclusion, the Court examined the viability of ***all*** of the equitable claims asserted by the plaintiffs and determined that each such claim was either not ripe or was a "a mere disguise for what really could be accomplished through discovery . . ." *Id.* at 1180 (emphasis added). In short, the Court considered the viability of the equitable claims alleged to determine whether the fundamental substance of the action was equitable or legal in nature. As such, it is appropriate for this Court to examine the viability of Warren County's claim for damages in determining whether or not this dispute should be heard by the chancery court or the circuit court.

3. There is no legal basis for Warren County's claim for damages

It is axiomatic that, in order to state a claim for damages, Warren County was required to plead a legally cognizable basis for the recovery of such damages. *See, Bilbo v. Thigpen*, 647 So. 2d 678, 687 (Miss. 1994)(holding that the mere allegation of injury and defendants' responsibility to prevent injury did not state a legally cognizable claim for damages pursuant to Miss. R. Civ. P. 12(b)(6)). The 2007 Circuit Court action does not allege a tort or contract claim. Issaquena and Warren has been unable to identify any case precedent or statutory basis for Warren County's claim for damages. Warren County has failed to identify any such basis.

Without some legal basis, Warren County's claim for damages is legally insufficient. As discussed in the initial brief, Warren County's authority to enforce the Warren County Floodplain and Subdivision Ordinances (the injunctive relief sought in the 2007 Circuit Court action) arises directly from Miss. Code Ann. § 17-1-19. This enforcement power ***only*** allows Warren County to institute an action or proceeding to enforce the ordinance. *Id.* Miss Code Ann. § 17-1-19 does not provide any relief in the form of damages to Warren County for enforcement of the ordinance. This Court has long held that a county only has the authority granted to it by

the Legislature. *H.K. Porter Co., Inc. v. Board of Supervisors of Jackson County*, 324 So. 2d 746, 754 (Miss. 1975). As such, the only possible authority for the award of any monetary amount would have to be the imposition of penal fines. Warren County has already filed numerous criminal actions seeking the imposition of said fines which have now been dismissed with prejudice and/or abandoned. (Rec. 53-87)

Additionally, the ***only*** damages actually alleged by Warren County in the 2007 circuit court action are the very same "damages" sought by Warren in the 2006 circuit court action. *Compare* (Rec. 90) *with* (Rec. 98-100) In the 2006 circuit court action, Warren County alleged that Issaquena and Warren and certain of its members, all appellants in the present action, were in violation of both the Subdivision and Floodplain Ordinances and that the County had sustained damages as a result. (Rec. 99-100) These damages were denied to Warren County by the circuit court. (Rec. 104-109) The denial was not appealed and that matter is now final. *See, Blakeney v. Warren County*, 973 So. 2d 1037 (Miss. Ct. App. 2008)

The doctrine of *res judicata* prohibits the re-litigation of claims that were either decided or should have been decided in a previous action. *Davis v. Attorney General*, 935 So. 2d 856, 864 (Miss. 2006). Warren County is clearly precluded from maintaining an action for damages in this action and in the 2007 circuit court action.

4. The Chancery Court can exercise pendant jurisdiction over any counter-claim for a remedy at law.

Even if Warren County's claim for damages was legally cognizable, this would not deprive the chancery court of subject matter jurisdiction over the present controversy precluding application of the priority jurisdiction rule. On the contrary, once jurisdiction attached in the Chancery Court pursuant to the filing of the present action, that court had jurisdiction over all other issues, although some issues might be purely legal in nature. *Re/Max Real Estate Partners Inc. v. Lindsley*, 840 So. 2d 709 (Miss. 2003); *Southern Leisure Homes, Inc. v. Hardin*, 742 So.

2d 1088 (Miss. 1999); *Leaf River Forest Products, Inc. v. Deakle*, 661 So. 2d 188 (Miss. 1995); *Tilloston v. Anders*, 551 So. 2d 212 (Miss. 1989); *Johnson v. Hinds County*, 524 So. 2d 947 (Miss. 1988); *Penrod Drilling Co. v. Bounds*, 433 So. 2d 916 (Miss. 1983); *Tideway Oil Programs, Inc. v. Serio*, 431 So. 2d 454 (Miss. 1983); *Thompson v. First Miss. Nat. Bank and Mut. Sav. Life Ins. Co.*, 427 So. 2d 973 (Miss. 1983); *H.K. Porter Co., Inc. v. Board of Supervisors of Jackson County*, 324 So. 2d 746 (Miss. 1975); *Morgan v. U.S. Fidelity & Guaranty Co.*, 222 So. 2d 820 (Miss. 1969); *Shaw v. Owen*, 90 So. 2d 179 (Miss. 1956); *McClendon v. Mississippi State Highway Commission*, 38 So. 2d 325 (Miss. 1949); *Bomer Bros. v. Warren County*, 60 So. 725 (Miss. 1913); *Vicksburg & Y.C. Tel Co. v. Citizens' Tel. Co.*, 30 So. 725 (Miss. 1901).

Near the conclusion of its brief, Warren County states that, had it known about the present action, the Circuit Court Action would not have been filed. *See Brief of Appellee at p. 9.* As such, we assume that Warren County would have raised the damage claims at issue in the 2007 Circuit Court action as a counter-claim in the present action in that instance. This Court has determined that legal claims asserted by a defendant to a chancery court action do not destroy the subject matter jurisdiction of the chancery court. *See, First Nat. Bank of Vicksburg v. Middleton*, 480 So. 2d 1153, 1155 -1157 (Miss. 1985).

In *Middleton*, the chancery court declined to exercise jurisdiction in an equitable interpleader action on the ground that it could not exercise jurisdiction over the legal claims raised by the defendants in relation to the interpled funds. *Middleton*, 480 So. 2d at 1155. In reversing the lower court's decision, this Court held that the "mere potential" for liability in the form of a counter-claim and the cross-claims asserted between the defendants did not remove the case from chancery jurisdiction and, as such, dismissal was not warranted. *Id.* at 1156-57.

Accordingly, even if Warren County's damage claim was legally viable and was asserted

as a counter-claim in this case, the Warren County Chancery Court had jurisdiction to determine the validity of any such claims once jurisdiction attached by virtue of Issaquena and Warren's claim for injunctive relief. Accordingly, the Chancery Court of Warren Country erred in its decision to order the present action transferred to the Circuit Court of Warren County.

CONCLUSION

Warren County's position and lower court's ruling is based solely on Warren County's argument that it is entitled to a jury in this case. Warren County's argument that Miss R. Civ. P. 57 creates an independent right to a jury trial in any declaratory judgment action is contrary to both the full text of the rule and this Court's precedent interpreting the rule. Further, Warren County's damage claim in Circuit Court Action is not legally viable. Even if it was, the Chancery Court would still have jurisdiction over that claim.

It is beyond dispute that the Chancery Court of Warren County has subject matter jurisdiction over the claims raised by Issaquena and Warren in their complaint. It is likewise clear that the Chancery Court of Warren County had concurrent jurisdiction over the claims raised by Warren County in the 2007 Circuit Court action as the primary relief sought in that action is equitable in nature. Both actions involve the same parties, the same subject matter and seek substantially the same remedy. As the present action was filed first, the priority jurisdiction rule applies and requires that the entire controversy go forward in the Chancery Court of Warren County.

For the reasons set for above, Issaquena and Warren request that this Court reverse the Chancery Court of Warren County's order transferring this action and remand this action for further proceedings on the merits consistent with the priority jurisdiction rule.

This the 24th day of September, 2008.

Respectfully Submitted:

ISSAQUENA AND WARREN COUNTIES LAND CO., LLC et al.

By: Lisa A. Reppeto

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CERTIFICATE OF SERVICE

I, Lisa A. Reppeto, do hereby certify that I have this day served via U.S. Mail, a true and correct copy of the foregoing pleading upon the following counsel of record:

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