

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ISSAQUENA WARREN COUNTIES LAND CO.
LLC, et al.

FILED

APPELLANTS

JUL - 7 2008

VS.

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

CAUSE NO. 2007-IA-02054-SCT

WARREN COUNTY, MISSISSIPPI

APPELLEE

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

BRIEF FOR APPELLANT


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 judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Issaquena Warren Counties Land Co. LLC, a privately held Mississippi limited liability company; Appellant;
2. Gary K. Blakeney, Appellant;
3. Kenneth D. Blakeney, Appellant;
4. Earnest K. Blakeney, Appellant;
5. Rose C. Blakeney; Appellant;
6. Robert D. Ainsworth, Appellant;
7. Pam Haley; Appellant;

8. Keith Hawsey; Appellant;
9. Tommy L. Thrash, Appellant;
10. Josh L. Thrash, Appellant;
11. Mike Sutton, Appellant;
12. Michael R. McTurner, Appellant;
13. Donna M. McTurner, Appellant;
14. Ervin Ray, Appellant;
15. Fay Ray, Appellant;
16. Gary Ray, Appellant;
17. Hugh J. Parker, Appellant;
18. Cynthia B. Parker, Appellant;
19. Joey Havens, Appellant;
20. Marty Elrod, Appellant;
21. Lisa A. Reppeto, Attorney for Appellant;
22. Mark D. Herbert, Attorney for Appellant;
23. Warren County, Mississippi, Appellee;
24. Kenneth B. Rector, Attorney for the Appellee;
25. Paul E. Winfield, Attorney for the Appellee;
26. Honorable Vicki R. Barnes, Trial Court Judge.

So certified this, the 7th day of July 2008.

By: 
Lisa A. Reppeto

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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

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APPELLEE

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

ORAL ARGUMENT NOT REQUESTED

BRIEF FOR APPELLANTS

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STATEMENT OF THE ISSUES

I. WHETHER THE CHANCERY COURT ERRED IN GRANTING WARREN COUNTY'S MOTION TO TRANSFER THE PRESENT ACTION TO CIRCUIT COURT.

STATEMENT OF THE CASE

The Appellants initiated the present action when they filed a Complaint for Declaratory and Injunctive Relief in the Chancery Court of Warren County, Mississippi on May 25, 2007. (Rec. 4-13)¹ In the Complaint, the Appellants sought an order from the Court declaring that the Appellee, Warren County, Mississippi, was barred from taking any further enforcement action against them for alleged violations of the Warren County Subdivision and Floodplain Management Ordinances and an injunction prohibiting the same. (Rec. 4-13) On May 31, 2007 Warren County filed an action against Issaquena and Warren Counties Land Co., LLC (“IWCLC”), an appellant herein, alleging violations of the Warren County Subdivision and Floodplain Management Ordinances, stating that Warren County had no adequate remedy at law absent a mandatory injunction requiring compliance and alleging that Warren County had been damaged as a result of IWCLC’s alleged failure to comply with said ordinances. (Rec. 88-91)

On June 27, 2007, Warren County filed its Motion to Dismiss or, in the Alternative to Transfer to Circuit Court. (Rec. 36-40) A hearing was held on September 5, 2007 and the Chancery Court entered an Order Granting the motion in the alternative and transferring the matter to Circuit Court on October 25, 2007. (Rec. 116) This Court granted the Appellants’ Petition for Interlocutory Appeal in an Order dated January 7, 2008. (Rec. 117)

¹ For the purposes of this brief, citations to the record on appeal are abbreviated as follows: “Rec.” indicates a citation to the clerk’s papers by page number; “Rec. Ex. Tab” indicates a citation to the Mandatory and Appellant’s Record Excerpts by tab and, where applicable, page number; “TR” indicates a citation to the transcript of the hearing held on September 5, 2007. The transcript of the September 5, 2007 hearing is included in Appellant’s Record Excerpts under Tab 3 for the Court’s convenience.

STATEMENT OF FACTS

In 2002, Appellant Issaquena and Warren Counties, Land Co., LLC and its individual members, all appellants herein (hereinafter referenced collectively as "Issaquena and Warren"), purchased approximately 1,200 acres of property from the Anderson Tully Timber Company. This property was purchased so that the members of Issaquena and Warren and their families could hunt and fish on their property. The individual members were also allotted a designated place to build camp homes. Shortly after purchasing the property, Issaquena and Warren was named as a defendant in a lawsuit filed by Paw Paw Island Land Company ("Paw Paw"), the owner of an island located in Madison Parish, Louisiana, in the Chancery Court of Warren County, Mississippi. In that case, Paw Paw seeks a prescriptive easement over a gated roadway running through the property and the right to park and launch boats from the Issaquena and Warren property in order to reach the island. In July of 2005, Warren County became involved in the aforementioned dispute when it issued a letter, at the request of Paw Paw, to Issaquena and Warren and its individual members to remove gates from the disputed road. As a result of this involvement, Issaquena and Warren filed an action against the County in the Chancery Court of Warren County seeking declaratory and injunctive relief with regard to the disputed road. This matter was consolidated with the original action filed by Paw Paw and is still pending before the Chancery Court of Warren County, Mississippi, Cause No. 2005-247 GN² (hereinafter "Original Chancery Court Action"). (Rec. 24-25)

Warren County first alleged that Issaquena and Warren violated the Warren Subdivision Ordinance ("Subdivision Ordinance") on March 1, 2006 in the Original Chancery Court Action in its expert witness designations and discovery responses. Although the Court was willing to

² All pleadings in the consolidated actions are now filed under original cause number 2003-179 GN.

allow Warren County to present proof on this issue, Warren County elected not to present any evidence on this issue. (Rec. 25)

On September 25, 2006, Warren County filed an action in the Circuit Court of Warren County against Issaquena and Warren Counties Land Co., LLC and its individual members Rose C. and Kenneth D. Blakeney alleging violations of the Subdivision Ordinance and the Warren County Floodplain Management Ordinance ("Floodplain Ordinance"). (Rec. 98-103) In that Complaint, Warren County alleged violations of the Subdivision and Floodplain Management Ordinance, sought an injunction to force Issaquena and Warren to submit to entry onto the property to investigate these violations and sought an award of "all damages, costs, and fees . . ." incurred as a result. (Rec. 100) Warren County did not elect to seek actual enforcement of the Subdivision and Floodplain Ordinances in this proceeding as it had already elected to pursue criminal charges against Issaquena and Warren instead. (Rec. 53-82)

The injunction was granted but the trial court denied Warren County's claim for damages. (Rec. 104-106). The injunction was dissolved on appeal to the Mississippi Court of Appeals and the denial of damages was not raised by Warren County on cross-appeal. *See, Blakeney v. Warren County*, 973 So. 2d 1037 (Miss. Ct. App. 2008).

On June 3, 2006 and December 19, 2006, Warren County filed 23 criminal summons in the County Court of Warren County, Mississippi against Petitioners alleging violations of the Subdivision Ordinance and/or Floodplain Ordinance. (Rec. 53-82) Those charges related to alleged violations of the Floodplain Management Ordinance have been held in abeyance since April 2, 2007 for lack of evidence. (Rec. 83-85) All charges relative to alleged violations of the Subdivision Ordinance have now been dismissed with prejudice. (Rec. 86-87)

On May 8, 2007, the County Court issued an Order granting a Motion to Dismiss filed by the Petitioners with regard to those charges filed on December 19, 2006 for alleged violations of

the Subdivision Ordinance by the individual members of IWCLC. (Rec. 86) Just prior to an omnibus hearing on May 17, 2006 regarding Issaquena and Warren's Motion to Dismiss the charge filed on June 3, 2006, Warren County announced its intention to dismiss this remaining criminal charge for alleged violations of the Subdivision Ordinance set for trial on May 21, 2007. Warren County stated that it would, instead, file a civil action in *Chancery Court* seeking declaratory and injunctive relief to enforce compliance with the Subdivision Ordinance. Specifically, Warren County stated that numerous legal issues raised in the aforementioned motion to dismiss should be determined by the Chancery Court as opposed to the County Court before which the criminal charges were pending. Rather than allow Warren County to dismiss the charge in a manner that would allow a later re-filing of the charge, the County Court required Warren County to dismiss the charge with prejudice. (Rec. 87)

In anticipation of the promised action (to be filed in the Chancery Court), on May 25, 2007, the Petitioners filed the instant action for declaratory and injunctive relief setting forth the relevant facts and seeking *declaratory and injunctive relief* regarding Warren County's ability to bring multiple actions against them for violations already alleged in other actions, and alternatively, seeking a declaration that they had not violated the Subdivision and/or Floodplain Ordinances and summons issued immediately thereafter. (Rec. 4-15) Six days later, on May 31, 2007, Warren County filed an action in the Circuit Court primarily seeking the equitable remedy of an injunction for alleged violations of the Subdivision and Floodplain Management Ordinances ("Circuit Court Action"). (Rec. 88-91)

On June 27, 2007, Warren County filed a Motion to Dismiss or, in the Alternative, to Transfer to the Circuit Court ("Motion"). (Rec. 36-39) In the Motion, Warren County admitted that the present action and its later-filed Circuit Court Action involved "similar subject matter." (Rec. 37) Warren County also openly acknowledged that its Circuit Court Action was filed five

days after the present action. (Rec. 112, 114)(TR 4, 7) Warren County further admitted: (1) that Issaquena and Warren seek equitable relief in the present action; (2) that the present action and the Circuit Court Action arise out of the same subject matter, *i.e.* “the enforcement or the violation of Warren County Subdivision and Flood Plain Management Ordinances . . .”; and, (3) that *the present action seeks an equitable remedy*. (TR 4) (emphasis added).

Without setting forth specific grounds for its decision, the Chancery Court granted Warren County’s Motion to Transfer and ordered that this case be transferred to the Circuit Court by Order dated October 25, 2007. (Rec. Ex Tab 4) This Court granted Issaquena and Warren’s Petition for Interlocutory Appeal on December 12, 2007 and, as such, this matter is now presented for this Court’s review. (Rec. 117)

SUMMARY OF THE ARGUMENT

This Court has long recognized the plaintiff's right to choose the forum in which his cause of action will be heard. *Era Franchise Systems, Inc. v. Mathis*, 931 So. 2d 1278, 1288 - 1289 (Miss. 2006); (citing *RE/Max Real Estate Partners v. Lindsley*, 840 So. 2d 709, 713 (Miss. 2003)). In the present case, the Plaintiffs (appellants herein) filed an action seeking injunctive and declaratory relief in the Chancery Court of Warren County. By grant of Warren County's Motion to Dismiss or, in the Alternative to Transfer Action to Circuit Court, this action, which seeks no remedy at law whatsoever, has been ordered transferred to the Circuit Court of Warren County for adjudication.

There was no real dispute in the proceedings below as to whether or not the Chancery Court of Warren County had subject matter jurisdiction over the Complaint filed in the present action. Issaquena and Warren's prayer for injunctive relief alone was sufficient to establish chancery jurisdiction. Rather, Warren County successfully argued in the proceedings below that this case and a later-filed action in Circuit Court should be decided in a single action and that action could only go forward in the Circuit Court of Warren County. The Chancery Court erred in transferring the present action to the Circuit Court of Warren County for the following reasons.

First, the priority jurisdiction rule mandates that where, as here, there are two actions pending in courts of competent jurisdiction, involving the same parties and substantially the same subject matter, the first-filed action proceeds to the abatement of the later. There is no dispute that the present action was the first-filed action. A simple comparison of the Complaint filed in the present action with the complaint filed in the later Circuit Court Action reveals that: (1) the same parties named in the Circuit Court Action are also parties to the present suit; and (2) both actions seek injunctive relief regarding the enforcement of the same

Warren County land use ordinances. As such, application of the priority jurisdiction rule required that the entire controversy proceed in the first-filed action, *i.e.* the present action. Inasmuch as the chancery court has jurisdiction over Issaquena and Warren's claim for injunctive relief, as well as Warren County's claim for injunctive relief (in the Circuit Court Action), it can also exercise jurisdiction over any other pendant claim, whether equitable or legal in nature.

Second, Warren County's argument that Miss. R. Civ. P. 57 requires that any claim for declaratory relief necessitates a jury determination and, thus, can only be heard in circuit court, is without merit. This Court has repeatedly held that Rule 57 is jurisdictionally neutral. Likewise, the Mississippi Rules of Civil Procedure provide that nothing set forth within them is intended to either expand or limit the jurisdiction of any state court. Warren County's interpretation would clearly limit the jurisdiction of chancery courts to grant declaratory relief regarding matters in equity.

Finally, Warren County's claim for damages in the Circuit Court action is utterly dependant upon and secondary to its equitable claims for declaratory and injunctive relief regarding the enforceability of the relevant land use ordinances. A realistic and pragmatic review of the complaint filed in the Circuit Court Action reveals that the only viable relief sought is equitable in nature. As such, the entire controversy should be determined by the Chancery Court of Warren County.

For the reasons set forth above, Issaquena and Warren respectfully request that this Court enter an Order reversing the ruling of the Chancery Court of Warren County and remanding to that Court for further proceedings on the merits.

STANDARD OF REVIEW

This interlocutory appeal was granted for the purpose of determining whether or not the present case was correctly transferred to the Circuit Court of Warren County, Mississippi from the Chancery Court of Warren County. Grant or denial of a motion to transfer is reviewed pursuant to the *de novo* standard of review. *Trustmark National Bank v. Johnson*, 865 So. 2d 1148, 1150 (Miss. 2004)(citing *Briggs & Stratton Corp. v. Smith*, 854 So. 2d 1045, 1048 (Miss. 2003); *Rogers v. Eaves*, 812 So. 2d 208, 211 (Miss. 2002)).

ARGUMENT

The Motion to Dismiss, or in the Alternative to Transfer to Circuit Court filed by Warren County did not attack the chancery court's subject matter jurisdiction over the Complaint filed by Issaquena and Warren. (Rec. 36-39) Indeed, Warren County admitted that "the relief that was sought by Issaquena and Warren's Complaint "sounds, at least partially, in equity." (TR 4) Warren County further acknowledged that "this suit seeks declaratory relief on the same subject matter as the Circuit Court case . . ." and that "judicial economy" required that *only one action was necessary and appropriate to resolve the dispute at the center of both actions*. (Rec. 38) Notwithstanding, Warren County argued that, due to its claim for damages raised in the Circuit Court Action and the declaratory relief requested in both actions, that one action should be the *later-filed* Circuit Court Action. (Rec. 38)

Warren County's argument, presumably accepted by the Chancery Court, is contrary to established Mississippi law with regard to the priority jurisdiction rule, this Court's interpretation of Miss. R. Civ. P. 57 and established precedent regarding the Chancery Court's jurisdiction over matters related to the enforcement of land use ordinances. As such, the order transferring this action to Circuit Court should be reversed.

I. THE CHANCERY COURT HAS PRIORITY JURISDICTION

This Court has consistently held to the "well established rule . . . that where two (2) suits between the *same parties* over the *same controversy* are brought in courts of *concurrent jurisdiction*, the court which first acquires jurisdiction retains jurisdiction over the whole controversy to the exclusion or abatement of the second suit." *Scruggs, Millette, Bozeman & Dent, P.A.*, 804 So. 2d 1000, 1006 (Miss. 2001)(citing *Hancock v. Farm Bureau Ins. Co.*, 403 So. 2d 877 (Miss. 1981))(emphasis added). *See also, Huffman v. Griffin*, 337 So. 2d 715, 719 (Miss 1976)). This Court has further held that priority is "determined by the date the initial

pleading is filed.” *Scruggs*, 804 So. 2d at 1006 (citing *Euclid-Mississippi v. Western Cas. & Sur. Co.*, 163 So. 2d 676 (Miss. 1964); *Shackelford v. New York Underwriters Ins. Co.*, 198 So. 31 (Miss. 1940)). The rule stated succinctly provides:

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).

In light of the forgoing authorities, the Chancellor’s order transferring this action to the Circuit Court of Warren County must be reversed if the following conditions are satisfied: (1) the Chancery Court can properly exercise jurisdiction over both cases; (2) both cases involve the same parties and (3) both cases involve substantially the same subject matter and cause of action. As all three conditions are clearly present, reversal is required.

A. The Chancery Court Can Properly Exercise Jurisdiction Over Both Actions.

1. Chancery Court has jurisdiction over Issaquena and Warrens’ claims.

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) More specifically, Issaquena and Warren’s complaint requests the following relief in alternative form: (1)

Declaratory³ and Injunctive Relief that any relief sought by Respondents with regard to any alleged violation of the Subdivision and/or Flood Plain Management Ordinance is precluded based on the doctrines of *res judicata* and/or judicial estoppel; or (2) Declaratory and Injunctive Relief that the Subdivision and/or Flood Plain Management Ordinances are either not applicable or that the Petitioners have complied with such ordinances; or (3) Declaratory and Injunctive Relief that the Subdivision and/or Flood Plain Management Ordinances are invalid.

It is beyond question that the remedy of injunction is a “matter in equity” and, therefore, within the jurisdiction of the Chancery Court. It is well settled that “in our state, as a general rule, the equity of an injunction will be sufficient to draw the whole case into equity for a full determination of all features, although all other features be purely of law.” *Jones v. Ackerman*, 403 So. 2d 1282, 1284 (Miss. 1981). In addition, the Court in *Leaf River Forest Products, Inc. v. Deakle*, 661 So. 2d 188, 193 (Miss. 1995) held that injunctive relief alone “is a subject over which the chancery court may assert jurisdiction.” Further, where jurisdiction is attached in chancery court it may decide all legal and equitable remedies. *Id.* Moreover, “the chancery court may retain jurisdiction and make determinations typically made by a jury.” *Id.* See also, *Cossit v. Nationwide Mut. Ins. Co.*, 551 So. 2d 879, 883 (Miss. 1989) *overruled on other grounds*.

Inasmuch as Issaquena and Warren seek the equitable remedy of injunction in the present action, the Chancery Court can properly assert subject matter jurisdiction over any other pendant claims raised in the action, even if those claims are legal in nature. Indeed, as Issaquena and

³ Warren County argued in the proceeding below that, by operation of Miss R. Civ. P. 57, any action for declaratory relief gives rise to the right to a jury and, thus, should be heard in Circuit Court. This argument is inconsistent with decisions of this Court determining that Rule 57 is “jurisdictionally neutral.” *Burnette v. Hartford Underwriters Ins. Co.*, 770 So. 2d 948, 952 (Miss. 2000). This argument addresses in greater detail *infra*.

Warren have *only* raised equitable claims in the present action, there can be no doubt that the Chancery Court can properly assert jurisdiction over the present, first-filed action.

2. Chancery Court has concurrent jurisdiction over Warren County's claims.

In the proceedings below, Warren County argued that this action should be transferred to circuit court because Warren County alleged a claim for damages in the later-filed Circuit Court Action. In short, Warren County sought the dismissal or transfer of the present action on the basis of a claim it raised in a later-filed action before a different court, not because of any legal claims raised by Issaquena and Warren in the present action – a sort of priority jurisdiction in reverse. Issaquena and Warren has been unable to find any case wherein an earlier filed action was dismissed or transferred in favor of a later-filed where jurisdiction was clearly appropriate in the first-filed action. Certainly, Warren County cited no such authority in the proceedings below. Notwithstanding arguments to the contrary, the chancery court clearly had concurrent jurisdiction over the later-filed action because the fundamental substance of *that* claim is equitable.⁴

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 plead. The Plaintiffs in *Trustmark* plead 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

⁴ Issaquena and Warren filed a motion to transfer Warren County's later-filed action to Chancery Court. By Order dated June 26, 2008, the Circuit Court has elected to defer ruling on that motion pending this Court's determination of the present interlocutory appeal. See Appendix “A.”

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 Chancery Court. *Id.* at 1150.

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 fundamental substance of Warren County’s claims asserted in the Circuit Court Action are equitable and arise from Issaquena and Warren’s use of land and Warren County’s allegations that this use violates the Subdivision and/or Floodplain Ordinances. Under *Johnson*, the Chancery Court clearly has jurisdiction to decide these issues. Likewise, as noted above, a claim for injunctive relief alone is sufficient basis for finding Chancery Court jurisdiction. *See, Deakle*, 661 So. 2d at 193 (Miss. 1995).

A review of the Circuit Court complaint filed by Warren County reveals that the primary relief sought is 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 completely dependant upon the successful prosecution of its equitable claims. (Rec. 90-91) Consequently, 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) As such, the Chancery Court has concurrent jurisdiction over the claims raised by Warren County in the Circuit Court Action. *See, 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).

As such, even if viable⁵, Warren County's claim for damages set forth in the Circuit Court Action do not preclude a finding of concurrent jurisdiction in the Chancery Court. On the contrary, Warren County's express claim for the equitable remedy of injunction, stating that it "lacks an adequate remedy at law . . ." clearly establishes the concurrent jurisdiction of the Chancery Court for the purpose of applying the priority jurisdiction rule. (Rec. 90)

B. Both Cases Involve The Same Parties

In the proceedings below, Warren County argued that the present action and the Circuit Court Action do not involve the same parties because the individual members of IWCLC are named plaintiffs herein but were not named as defendants in the Circuit Court Action. (TR 7-8)(Rec. 113) Notwithstanding, a cursory review of the relevant pleadings reveals that *all parties* to the Circuit Court Action *are also parties* to the present action. (Rec. 4-6, 21-23, 88) Specifically, IWCLC is a named plaintiff in the present action and is the sole defendant in the later-filed Circuit Court Action. (Rec. 4-6, 21-23, 88) Likewise, Warren County is the sole

⁵ See, *infra*.

defendant named in the present action and is the plaintiff in the Circuit Court Action. (Rec. 4-6, 21-23, 88) As such, both cases clearly involve the same parties.

In the proceedings below, Warren County failed to cite any authority to support the proposition that the presence of additional parties in the first-filed action somehow renders the priority jurisdiction rule inapplicable. On the contrary, the facts involved in the *Scruggs* case belie this argument. In that case, Defendant Mitchell was named as a party in the first-filed action but not in the second. *See, Scruggs*, 804 So. 2d at 1005-6. Notwithstanding, this Court found “that the parties of both the Jackson County Chancery Court and Coahoma County Chancery Court litigation are clearly the same parties.” *Id.* at 2005. Likewise, both actions at issue here involve the same parties.

C. Both Cases Involve Substantially the Same Subject Matter and Cause of Action

In the proceedings below, Warren County admitted that the present action and the later-filed Circuit Court Action involve the same subject matter. In the hearing on September 5, 2007, counsel for Warren County stated: “I would admit to you, your Honor, for the sake of clarity, that both of these cases involve the same subject matter. They involve the enforcement of Warren County’s Subdivision and Flood Plain Management Ordinances.” (TR 4) Notwithstanding, Warren County argued that its claim for damages renders the priority jurisdiction rule inapplicable due to the lack of such a claim in the present case. (Rec. 36-38)(TR 7-8) This argument takes an overly formalistic and rigid view as to what constitutes “substantially the same subject matter and cause of action” as that phrase relates to the priority jurisdiction rule. 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*, 804 So. 2d at 1004-5

(emphasis in original).

A fair reading of the complaint filed by Warren County in the 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 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 Circuit Court Action.

Specifically, Issaquena and Warren seek a declaration that the Subdivision and Floodplain Ordinances cannot be enforced against them on the grounds that any such enforcement action is now barred by the doctrines of *res judicata* and/or judicial estoppel and an injunction prohibiting Warren County from any further attempts at enforcement. (Rec. 28-30) Alternatively, Issaquena and Warren seek a finding that they are in compliance with said ordinances or that the ordinances themselves are invalid. (Rec. 29-30) In the Circuit Court Action, Warren County seeks a declaration that it has the authority to enforce the Subdivision and Floodplain Ordinances against Issaquena and Warren, injunctive relief in furtherance of said authority and damages (attorney fees and other costs and expenses) “incurred as a result of defendant’s failure to comply with the Subdivision Ordinance and Floodplain Management Ordinance.” (Rec. 91)

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 Circuit Court Action. As such, it is clear that the present action and the later-filed Circuit Court Action involve substantially the same subject matter and cause of action.

D. The Priority Jurisdiction Rule Is Not Limited to Parallel Chancery

Court Actions

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).

In the proceedings below, and without citation to any authority whatsoever supporting its proposition, Warren County argued that priority jurisdiction does not apply here because the parallel actions are not both chancery court actions. This proposition obviously has no foundation in the law. In fact, this Court has recently applied the priority jurisdiction analysis with respect to parallel proceedings where one case was pending in chancery court and the other pending in circuit court. *See Ras Family Partners, LP v. Onnam Biloxi, LLC*, 968 So. 2d 926 (Miss. 2007). In *Ras*, this Court stated:

The principle of priority jurisdiction presupposes that the first court in which suit is filed is a court of competent jurisdiction. *Harrison County Dev. Comm'n v. Daniels Real Estate, Inc.*, 880 So. 2d 272, 276 (Miss. 2004), *overruled on other grounds by City of Jackson v. Estate of Stewart*, 908 So. 2d 703, 711 (Miss. 2005). Accordingly, we address the issues in the following order: (1) whether the *circuit court* could have subject matter jurisdiction over the case at all; and (2) if so, we then determine priority jurisdiction by examining in which court the suit was first filed.” *Upon determining that both the chancery and circuit courts had concurrent jurisdiction over the claims at issue*, as the Chancery and County Courts do here, *this Court next considered which court had priority jurisdiction*, noting: “The ‘*first to file*’ or ‘*race to the courthouse*’ rule is *well-established* in Mississippi case law.” *See Scruggs supra*. This Court also noted that in order to determine which court first acquired jurisdiction, we look at “the date the initial

pleading is filed, provided process issues in due course.” *Scruggs*, at 1006 (quoting *Huffman v. Griffin*, 337 So.2d 715 (Miss. 1976)).

Id. at 929 (emphasis added). *See also, Soriano v. Gillespie*, 857, So. 2d 64 (Miss. Ct. App. 2003).

It is clear from this Court’s recent analysis that priority jurisdiction is not limited to cases involving parallel chancery court proceedings. On the contrary, the principal of priority jurisdiction clearly applies to this case.

In both the present action and the Circuit Court Action, the same parties are involved, the same events and facts are relevant, and the same primary relief is sought. The relief sought in both actions is a determination as to whether or not the Subdivision and Flood Plain Ordinances can be enforced against Issaquena and Warren by Warren County under the facts of this case, the very same facts that would be operative in the Circuit Court Action filed by Warren County. If enforceable, Warren County seeks an injunction to enforce. If not enforceable, Issaquena and Warren seek an injunction against Warren County against any further attempts to hold them in violation. Clearly, both actions involve the same controversy between the same parties. Given that this action was filed prior to the Circuit Court Action, the Chancery Court of Warren County has priority jurisdiction over the present dispute. As such, the Chancery Court erred in granting Warren County’s Motion.

II. RULE 57 IS NOT IN CONFLICT WITH PRIORITY JURISDICTION RULE

In the proceedings below, Warren County also argued that, because declaratory relief is requested in both the present action and the Circuit Court Action pursuant to Miss. R. Civ. P. 57, jurisdiction is only proper in the Circuit Court. (TR 5-6) Warren County argued that, because Rule 57 references the ability to demand a jury where appropriate, this necessarily means that all actions for declaratory relief must be tried in circuit court. (Rec. 37-38)(TR 5-6) This argument ignores the language employed in Rule 57, other relevant rules incorporated by reference and this

Court's precedent interpreting Rule 57.

Warren County relied on the following language in Rule 57: "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). This reliance was misplaced, given that Mississippi has never adopted Rule 39. In fact, the heading of Rule 39 is as follows: TRIAL BY JURY OR BY THE COURT [OMITTED]. Although, Rule 38 of the Mississippi Rules of Civil Procedure provides that the right to a jury trial is inviolate, Rule 82(a) 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.

Further, the Mississippi Supreme Court has repeatedly held that Rule 57 is "jurisdictionally neutral." *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 v. Hartford Underwriters Ins. Co.*, 770 So. 2d 948, 952 (Miss. 2000); *Tillotson v. Anders*, 551 So. 2d 212, 214 (Miss. 1989). In *Burnette*, this Court clearly stated that:

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).

The declaratory relief in both the present action and in the later-filed Circuit Court Action relates to the enforceability of Warren County land use ordinances against Issaquena and Warren. This is clearly a matter within the jurisdiction of the Chancery Court. *See, Johnson*, 524

So. 2d at 952. The interpretation of Rule 57 advocated by Warren County would effectively limit the subject matter jurisdiction of the Chancery Court of Warren County in this instance. Such an interpretation is not supported by the rule or this Court's precedent interpreting the rule. As such, the court below should have rejected this argument.

III. WARREN COUNTY'S CLAIM FOR DAMAGES DOES NOT DEPRIVE THE CHANCERY COURT OF JURISDICTION

In the proceedings below, Warren County argued that it is entitled to a jury trial for its damages claim asserted in the Circuit Court Action and, as such, the Chancery Court should dismiss or transfer for want of subject matter jurisdiction. This claim is dubious, at best.

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 plead. The Plaintiffs in *Trustmark* plead 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, the Court ordered the matter to be transferred to Chancery Court. *Id.* at 1150.

As examined above, 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). The fundamental substance of the claim at issue in the present case is equitable and arises from the Plaintiffs' use of land and the Defendants' allegations that this use violates the Subdivision and Floodplain Ordinances.

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 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 Circuit Court Action is equitable, not legal, in nature. *Trustmark*, 865 So. 2d at 1151-1152.

Warren County relied on *Union National Life Ins. Co. v. Crosby*, 870 So. 2d 1175 (Miss. 2004) in support of its argument that the damage claim raised in the Circuit Court Action warranted dismissal and/or transfer of the present action to the Circuit Court of Warren County. (Rec. 37-38) This case does not support Warren County’s position in light of the allegations set forth and remedies sought in the relevant actions. *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. However, in reaching this conclusion, the Court determined that all of the equitable claims asserted by the plaintiffs were either not ripe or were a “a mere disguise for what really could be accomplished through discovery . . .” *Id.* at 1180 (emphasis added).

A realistic and pragmatic review of the Complaint filed in the present action reveals that the *only* relief sought is equitable in nature. (Rec. 21-31) Indeed, Warren County had no choice but to admit that the Complaint filed in the present action “sounds, at least partially, in equity . . .” (TR 4) Likewise, a realistic and pragmatic review of the complaint filed by Warren County in the Circuit Court Action reveals that the primary relief sought in that action is equitable in nature, *i.e.* injunction relief and declaratory relief regarding the enforceability of land use

ordinances. (Rec. 88-91) Thus, *Crosby* offers no support to Warren County's argument.

Further, Warren County's claim for damages is legally insufficient. Warren County's authority to enforce the Warren County Floodplain and Subdivision Ordinances (the injunctive relief sought in the 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). The ordinances which Warren County allege were violated are penal in nature. Warren County has identified no authority to collect damages for the alleged violation of these ordinances other than the fines allowed pursuant to Miss. Code Ann. § 17-1-27. Indeed, Issaquena and Warren was been unable to identify even a single case wherein a county or municipality was awarded damages for costs and attorney fees for the ordinance violations of its citizens.

Warren County has already filed numerous criminal actions seeking the imposition of said fines which have now been dismissed with prejudice and/or held in abeyance. (Rec. 53-87) Additionally, the **only** damages actually alleged by Warren County in the Circuit Court Action are the very same "damages" sought in the 2006 Circuit Court Action. *Compare* (Rec. 90) *with* (Rec. 98-100) In the 2006 Circuit Court action, Warren County alleged that IWCLC 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) In the 2007 Circuit Court action, Warren County asserted that it

should be awarded “damages, attorney’s fees and other costs and expenses incurred by the plaintiff as a result of defendant’s failure and refusal to comply with the Subdivision Ordinance and Floodplain Management Ordinance.” (Rec. 90) Both claims seek damages for the enforcement of the Subdivision Ordinance and Floodplain Ordinances. Clearly, Warren County has again asserted the same claim for damages which has already been denied by the Circuit Court of Warren County in the 2006 Circuit Court Action.

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 Circuit Court Action. Even were this not the case, the damages at issue are clearly not the focus of the relief sought by Warren County in the Circuit Court Action.

The mere fact that Warren County included a single ancillary and unsustainable claim for damages in a case which primarily seeks equitable relief filed in circuit court did 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 attaches in a chancery proceeding, 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).

As such, even if Warren County had asserted a claim for damages in the context of the present action (which it has not), the 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 County erred in its decision to order the present action transferred to the Circuit Court of Warren County.

III. CONCLUSION

It is abundantly clear that the Chancery Court of Warren County has subject matter jurisdiction over the claims raised by Issaquena and Warren in their Complaint. Further, it is likewise clear that the Chancery Court of Warren County had concurrent jurisdiction over the claims raised by Warren County in the 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

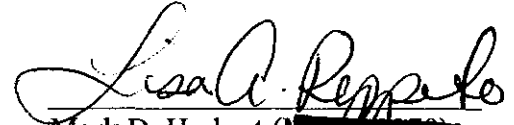
proceedings on the merits consistent with the priority jurisdiction rule.

This the 7th day of July, 2008.

Respectfully Submitted:

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

By:



Mark D. Herbert (M [REDACTED])

Lisa A. Reppeto ([REDACTED])

CERTIFICATE OF SERVICE

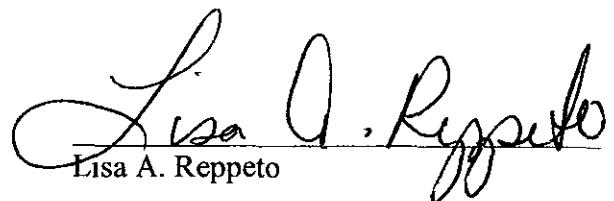
I, Lisa A. Reppeto, do hereby certify that I have this day served via U.S. Mail, a true and correct copy of the foregoing pleading upon the following counsel of record:

Honorable Vicki R. Barnes
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THIS the 7th day of July, 2008.



Lisa A. Reppeto

IN THE CIRCUIT COURT OF WARREN COUNTY, MISSISSIPPI

WARREN COUNTY, MISSISSIPPI

PLAINTIFF

VS.

CAUSE NO. 07,0133-CI

ISSAQUENA AND WARREN COUNTIES
LAND COMPANY, LLC

DEFENDANTS

ORDER

Comes on before the Court the Motion For Protective Order and Stay Proceedings Pending Interlocutory Appeal. The Court having heard arguments from both counsel for the Defendant and the Plaintiff is of the following opinion:

That the issue of whether the Chancery Court should retain jurisdiction of this cause, or that it should be ultimately tried in this Court is at this time before the Supreme Court on interlocutory appeal. Therefore this Court will defer to our Supreme Court to determine which court has jurisdiction, and hereby enters a stay of proceedings, other than discovery matters, before this court. Since discovery will be necessary in this cause no matter which court ultimately is determined to have jurisdiction, it should proceed. If court intervention is needed on discovery this court feels confident to make said rulings based on the Rules of Civil Procedure of our State.

SO ORDERED AND ADJUDGED this the 26th day of June 2008


CIRCUIT COURT JUDGE

CERTIFIED AND ATTESTED A TRUE COPY

This 26 DAY OF JUNE 20 08
SHELLY ASHLEY-PALMERTREE, CIRCUIT CLERK

BY  D.C.

