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STATEMENT OF THE CASE

Appellee (hereinafter referred to as “Warren County”), being dissatisfied with the Statement of the Case contained in the Appellants’ brief, provides the following description of the “nature of the case” and “facts relevant to the issues presented for review”. MRAP 28(a)(4).

In 2002, Issaquena and Warren Counties Land Co., LLC purchased approximately 1200 acres of real property in Warren County, Mississippi. (R 007) Issaquena and Warren Counties Land Co., LLC and all of its individual members are the Appellants herein and shall hereafter be referred to collectively as “Issaquena”. Issaquena devised a plan to subdivide a portion of said property into fifteen lots. Issaquena hired an out of state engineering firm to survey and plat the proposed subdivision. Each of the individual members were conveyed, by deed, a lot in the subdivision. In addition, Issaquena constructed roads, installed utilities, and pursued other activities necessary to the development of the subdivision. Several of the members constructed large, expensive homes on their individual lots. (R 088-091) At least one of the members granted a mortgage on his lot to a local bank.

During the course of the development, Warren County advised Issaquena that the subdivision of property in the county for residential development requires compliance with the county’s subdivision ordinance. Among other things, the ordinance requires the proposed subdivision plat and other development plans to be submitted to the county for approval. (R 089) Issaquena, which is believed to be composed of persons who were all non-residents of Warren County prior to development of the subdivision, refused to comply with the subdivision ordinance in any manner. (R 090) Rather, Issaquena concocted a number of disingenuous arguments supporting their non-compliance, some of which are set forth in their complaint filed in this case. (R 004-013)

Warren County's subdivision ordinance states that those who violate the ordinance are guilty of misdemeanors and are subject to fine. Initially, Warren County sought to enforce its subdivision ordinance by the imposition of fines upon Issaquena in the Warren County Court. (R53- 5R82) However, contrary to the inferences in Issaquena's brief, these misdemeanor charges were never determined on their merits. Rather, after the county court judge strongly suggested that the matter should be pursued civilly rather than through the imposition of misdemeanor fines, the county prosecuting attorney voluntarily agreed to dismiss the charges arising out of Issaquena's violation of the subdivision ordinance. (R 86, 87)

Warren County concurred with the decision of the prosecuting attorney and concluded that the dispute relating to the validity or legality of the ordinance and arguments relating to whether the ordinance by its terms applied to Issaquena's development, are matters that are not appropriate for adjudication in a misdemeanor prosecution. The county court judge's order of dismissal reflects the decision of the county to pursue a civil action to enforce the ordinance rather than seek a misdemeanor conviction. (R 87)

Subsequently, the county did direct its attorneys to file a civil suit in Warren County Circuit Court seeking declaratory relief in an effort to resolve the dispute with Issaquena regarding applicability and enforceability of the subdivision ordinance (hereinafter the "Circuit Court Case"). The Circuit Court Case also includes a claim for damages. (R 88-91) Unbeknownst to Warren County, however, six days previous to the filing of the Circuit Court Case, Issaquena filed this case in Warren County Chancery Court (hereinafter the "Chancery Court Case") also seeking declaratory relief related to the subdivision ordinance. (R 4-14) Upon motion of Warren County, the Chancellor

transferred the Chancery Court Case to Warren County Circuit Court. In her order, the Chancellor does not state the grounds upon which she believed that the transfer was appropriate. (R 116)

SUMMARY OF ARGUMENT

Although Issaquena in its brief attempts to cloud the issue with substantial extraneous matter, including arguments directed to the merits of the case, the only issue for resolution today is whether this dispute will be tried and decided in the chancery court or in the circuit court. Issaquena says that the Chancellor erred by transferring the Chancery Court Case to the circuit court. Because Issaquena filed its case first, Issaquena argues that the so-called “priority of jurisdiction” rule requires the case to proceed in chancery court. The “priority of jurisdiction” rule is a judicially created concept. According to the rule, the court where a case is filed first has priority jurisdiction over a subsequently filed case in another court of “concurrent jurisdiction” if the two cases are between “the same parties”, seek “the same remedy” and “relate to the same question.” *Petition of Beggiani*, 519 So.2d 1208, 1210 (Miss. 1998). In response, Warren County has argued that the “priority of jurisdiction” rule does not necessarily control in this case because Warren County seeks an additional remedy by way of damages in the Circuit Court Case. Further, Warren County argues that the “priority of jurisdiction” is not relevant here since Warren County is entitled to a jury under Rule 57 of the Mississippi Rules of Civil Procedure, which specifically provides for a jury trial in suits for declaratory relief.

Thus, we believe that the “priority of jurisdiction” rule should not be determinative of this appeal. Rather, we believe that the chancellor correctly sent this case to the circuit court in order to facilitate Warren County’s demand that the various claims for declaratory relief be determined by a jury pursuant to Rule 57. In addition, the chancellor’s decision is supported by the obvious

conclusion that the circuit court is the more appropriate forum for determination of Warren County's claims at law for damages.

ARGUMENT

Both the complaint filed by Issaquena in the Chancery Court Case, as well as the complaint filed by Warren County in the Circuit Court Case, seek declaratory judgment relief relating to the same subject matter, i.e., applicability and enforceability of the subdivision ordinance to Issaquena's housing development. Rule 57 of the Mississippi Rules of Civil Procedure governs claims for declaratory relief:

(a) **Procedure.** Courts of record within their respective jurisdictions may declare rights, status, and other legal relations regardless of whether further relief is or could be claimed. The court may refuse to render or enter a declaratory judgment where such judgment, if entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

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. The existence of another adequate remedy does not preclude a judgment for declaratory relief in actions where it is appropriate.

The court may order a speedy hearing of an action for declaratory judgment and may advance it on the calendar. The judgment in a declaratory relief action may be either affirmative or negative in form and effect. Miss. R. Civ. P. 57

Warren County has insisted that it is entitled to have a jury determine the claims for declaratory relief made by the parties in this controversy relating to Warren County's subdivision ordinance. Since juries are not available in the chancery court, Warren County requested that the claims for declaratory relief in the Chancery Court Case be transferred to the circuit court so that a

jury could consider same along with Warren County's claims pending there for declaratory relief and damages. Issaquena disagrees and claims that Warren County's right to a jury trial under Rule 57 must yield to the "priority of jurisdiction" rule enunciated by this Court in other cases. In essence, Issaquena says the right to a jury under Rule 57 does not apply to cases filed in Chancery Court. Stated differently, Issaquena says that because Issaquena won the race to the courthouse by filing first in Chancery Court, Warren County has lost its Rule 57 right to have a jury determine the various claims for declaratory relief pending in these cases. We have not been able to find any authority for Issaquena's position, nor has Issaquena cited us to any such authority.

In the first place, we have serious doubts that the "priority of jurisdiction" rule applies to these facts regardless of Rule 57. The "priority of jurisdiction" rule is not absolute. The Court in *Beggiani*, supra, stated that:

In order that the rule may be applicable which prevents interference by another court with the jurisdiction of the court first assuming it, the second action should be between the same parties, *seeking on the one hand, and opposing on the other, the same remedy, and should relate to the same question.* *Beggiani*, 519 So.2d at 1210 (Emphasis by the Court).

In the Circuit Court Case, Warren County is seeking not only a declaratory judgment, but also damages at law.¹ There is no claim for damages in the Chancery Court Case filed by Issaquena. Therefore, since Issaquena is not seeking the "same remedy" in the Chancery Court Case, the "priority of jurisdiction" rule does not apply. This case demonstrates one important reason that the rule requires remedies to be the same in both cases. Clearly, if only one of the cases seeks a remedy

¹In its brief, Issaquena attempts to argue the merits of Warren County's claim for damages, suggesting that "Warren County's claim for damages is legally insufficient." (Issaquena's brief, p. 23) Issaquena's various defenses (for example, res judicata) to the damage claim are irrelevant to the determination of whether those defenses will be ultimately considered in chancery or circuit.

for which the claimant is entitled to a jury trial, the “priority of jurisdiction” rule should not be applied to deprive the claimant of his right to a jury. Stated differently, 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. Rather, the selection of the forum should be based on other considerations, such as which court is more appropriate to determine the particular relief being requested. According to *Beggiani*, supra, the time of filing is determinative only when all other factors or considerations are the same or equal.

If we are not constrained by the “priority of jurisdiction” rule, as the chancellor obviously concluded, then the only issue is whether or not this case is more appropriate for determination in the circuit court rather than the chancery court. Clearly there was ample basis for the chancellor to determine that this case was more appropriate for determination in the circuit court. If the “priority of jurisdiction” rule is not applicable because different remedies are sought, then certainly the chancellor was justified in concluding that the case should be in circuit court based on the fact that Warren County has a claim at law for damages. It is well established that claims at law for damages are more appropriate for determination under the general jurisdiction of the circuit court. *Union National Life Ins. v. Crosby*, 870 So.2d 1175, 1182 (Miss. 2004)

Assuming, *arguendo*, that the “priority of jurisdiction” rule does apply here, despite the additional remedies sought in the Circuit Court Case, then the issue for determination is whether, in a declaratory judgment action, the “priority of jurisdiction” rule defeats Warren County’s right to a trial by jury afforded by Rule 57. We think this Court has answered this question in another Rule 57 case:

Finally, Anders suggests, if we understand him correctly, that his prayer for declaratory judgment makes his suit cognizable in chancery. 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. Rule 82(a), Miss. R. Civ. P. There is good reason why we ought heed the Newspaper's arguments, and do so interlocutorily. ***The Newspaper has demanded its right to trial by jury.*** If this action is allowed to remain in chancery court, there will be no trial by jury, this notwithstanding the command of our constitution that "the right of trial by jury shall remain inviolate" (citations omitted). *Tillotson v. Anders*, 551 So.2d 212, 214 (Miss. 1989) (emphasis added)

Just as the newspaper had the right to have the plaintiffs' claims for declaratory relief tried to a jury in the *Tillotson* case, *supra*, the chancellor correctly found that Warren County has a similar right in this case.

In its brief, Issaquena glosses over the pivotal issue on this appeal. Issaquena is unable to enunciate a plausible argument to circumvent the very plain language of Rule 57 that dictates a jury trial on claims for declaratory relief when requested by a party. Instead, Issaquena seems to say only that Warren County is not entitled to a jury under Rule 57 because Rule 57 is "jurisdictionally neutral". (See Issaquena's brief, p. 20) Frankly, we are having difficulty following this argument. The fact that Rule 57 is "jurisdictionally neutral" has nothing to do with whether or not a party in a declaratory judgment case is entitled to demand a jury. It appears that the "jurisdictionally neutral" terminology originated with Justice Robertson's opinion in *Tillotson*, *supra*. As discussed above, in *Tillotson*, the plaintiff wanted his case to proceed in chancery court. He argued that his "prayer for declaratory judgment makes his suit cognizable in chancery." *Id.* This Court disagreed and held,

in essence, that a claim for declaratory relief does not create subject matter jurisdiction. Rather, a claim for declaratory judgment is “jurisdictionally neutral” and may be sought “only in a court of otherwise competent jurisdiction”. *Id.* As discussed above, the Court in *Tillotson* then proceeded to transfer the case to circuit court where the defendant could have its requested jury trial. Based on the foregoing, we are unable to understand Issaquena’s argument that the “jurisdictionally neutral” nature of Rule 57 somehow prevents Warren County from having the claims for declaratory relief tried to a jury in circuit court. Contrarily, the fact that Rule 57 is “jurisdictionally neutral” seems to support our contention that claims for declaratory relief in the Chancery Court Case can be transferred to circuit court which, as a court of general jurisdiction, plainly has subject matter jurisdiction of the claims in the Chancery Court Case.²

Since Issaquena is unable to provide any persuasive authority for its contention that Rule 57 does not mean what it says regarding right to a jury trial, Issaquena is forced to rely exclusively on the “priority of jurisdiction” rule to avoid the transfer of this case from chancery to circuit court. However, it seems absurd to suggest that Warren County’s clear right to a jury under Rule 57 should be lost simply because Issaquena was able to file its lawsuit in chancery court six days before Warren County put its complaint on file. We understand the common sense basis for the “priority of jurisdiction” rule. However, the rationale of the rule is not relevant here and it does not make common sense for the rule to be applied under these facts. There is clearly no policy reason or legal

²Issaquena has not argued that the circuit court does not have subject matter jurisdiction of the claims in the Chancery Court Case. Rather, Issaquena has relied upon the “priority of jurisdiction” rule which is necessarily applicable only in cases where both courts have “concurrent jurisdiction.” *Beggiani*, 519 So.2d at 1210.

reason to conclude that Warren County has lost its right to a jury trial on these facts by virtue of the application thereto of the “priority of jurisdiction” rule.

In *Burnette v. Hartford Underwriters, Inc.*, 770 So.2d 948 (Miss. 2000), the Court held that the right to a jury trial would determine the place the action would be heard.

We find that the present case is legal in nature. However, even if some doubt existed in this regard, that doubt would be resolved in favor of the Burnettes' position. Article 3, § 31 of the Mississippi Constitution provides that the "right of trial by jury shall remain inviolate." Clearly the Burnettes' right to a jury trial would be infringed upon if this case were heard in chancery court. In "[c]hancery court, with some few statutory exceptions, the right to jury is purely within the discretion of the chancellor, and if one is empaneled, its findings are totally advisory." (citations omitted) This case must be transferred to circuit court so that the Burnettes' right to a jury trial will be effectively honored. *Id.* at 952.

Since Warren County is plainly entitled to have its claim for declaratory relief under Rule 57 and its claim for damages at law tried to a jury, the fact that this case was filed six days before the Circuit Court Case is of no consequence and the “priority of jurisdiction” rule is not relevant. Rather, it is Rule 57 and Warren County’s right to a jury trial that control the forum for resolution of this dispute.

Issaquena’s arguments founded on the “priority of jurisdiction” rule constitute nothing more than a “smoke and mirrors” strategy to obscure the real issue on this interlocutory appeal. For the purpose of defining and summarizing the very narrow issue here, we invite the Court to consider a slightly different scenario than the facts at bar. Specifically, we think the following hypothetical may be helpful in addressing the singular issue for determination today. Assume that the Circuit Court Case had not been filed. It certainly would not have been filed if the attorneys representing Warren County had known that the Chancery Court Case had already been filed by Issaquena. Assume

further that, in the absence of the Circuit Court Case, Warren County filed a motion under Rule 57 in the Chancery Court Case requesting that the case be transferred to circuit court so that Warren County could have a jury determine the declaratory relief prayed for by Issaquena in its complaint in the Chancery Court Case. Assume that the chancellor transferred Issaquena's complaint for declaratory relief to the circuit court on the basis that Rule 57 plainly affords Warren County a jury trial on such issues. Would the chancellor have been in error under this hypothetical fact scenario? Clearly, based on the precise and unequivocal wording of Rule 57, the transfer of the case into circuit court in our hypothetical situation would not be error.

Contrarily, we think it would have been glaring error for the chancellor in our hypothetical to deny the motion to transfer and to retain the case in chancery, thereby denying Warren County its Rule 57 right to a trial by jury on Issaquena's complaint for declaratory relief. If Warren County would have been entitled to have the Chancery Court Case transferred to circuit court in the above hypothetical as Rule 57 clearly mandates, then we cannot comprehend how that right should be lost simply because Warren County subsequently and unknowingly filed a similar case in the circuit court. We think this hypothetical makes clear that the "priority of jurisdiction" rule has no relevance to the issue before the Court.

CONCLUSION

The Chancery Court Case should be transferred to circuit court because Rule 57 mandates the transfer. The fact that there is already pending in circuit court a similar subsequently filed case is of no consequence. Clearly, Issaquena has deftly asserted the "priority of jurisdiction" arguments in this case in the hope that the chancellor, and now this Court, will lose sight of the real issue, that being whether Warren County has an absolute right to have claims for declaratory relief tried by a


jury. The chancellor was not distracted or misled by Issaquena's "priority of jurisdiction" arguments and clearly found that Warren County was entitled to have the claims for declaratory relief tried to a jury in circuit court pursuant to Rule 57. The chancellor also clearly concluded that Issaquena cannot defeat Warren County's entitlement to a jury under Rule 57 simply by choosing to bring its claims for declaratory relief in chancery court. Based on the express language of Rule 57, the chancellor could make no other decision other than to honor Warren County's request for a jury and transfer the case to circuit court. Clearly, that decision should be affirmed.

Respectfully submitted,

WARREN COUNTY, MISSISSIPPI

BY: 

Kenneth B. Rector

Bar No. 

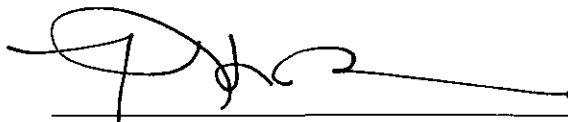
WHEELESS, SHAPPLEY, BAILESS
& RECTOR, LLP
POST OFFICE BOX 991
VICKSBURG, MS 39181-0991
TELEPHONE: 601-636-8451

PAUL E. WINFIELD, ESQ.
BAR NO. 100855
WINFIELD & MORAN
P. O. BOX 1448
VICKSBURG, MS 39181

CERTIFICATE

I, Kenneth B. Rector, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing to Mark D. Herbert, Esq. and Lisa A. Reppeto, Esq., Watkins, Ludlam, Winter & Stennis, P. O. Box 427, Jackson, MS 39205, and Hon. Vicki R. Barnes, Chancellor, P. O. Box 351, Vicksburg, MS 39181.

THIS 8th day of August, 2008.

A handwritten signature in black ink, appearing to be 'KBR', written over a horizontal line.

KENNETH B. RECTOR