

COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CASE NUMBER: 2008-CA-00066

JOHN T. WHITLEY

APPELLANT

VS.

CITY OF BRANDON, MISSISSIPPI

APPELLEE

FILED
AUG 15 2008
OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

APPELLANT'S REBUTTAL BRIEF

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STATEMENT OF THE FACTS

On September 20, 2007 the City of Brandon, Mississippi filed their Complaint For Injunctive and Other Relief against the Appellant, John T. Whitley in the County Court of Rankin County, Mississippi, being County Court case number 2007-1267. The Appellee's Record Excerpts reflects the County Court Complaint on page 1-36).

The Defendant/Appellant, John T. Whitley, filed his Answer and Affirmative Defenses stating that the County Court of Rankin County, Mississippi did not have jurisdiction under Section 93-9-23 of the Mississippi Code of 1972 to hear this case for the issuance of such injunction. (Record Excerpts at page 175).

On November 28, 2007 a hearing was held before the County Court Judge, Hon. Kent McDaniel, he heard the Appellant's Motion For Lack of Jurisdiction, and thereafter entered an Order whereby he ruled that he did not have jurisdiction of the subject matter. (A copy of his Order was not included in the record Excerpts, and the Appellant- includes a copy of the same as an exhibit to this pleading. Further, the County Court Judge's Order Transferred the County Court Case to the Chancery Court requiring the Defendant/Appellant to pay the transferr fee. (see Exhibit "A").

The Circuit Clerk/County Court Clerk thereafter Transferred the case to the Chancery Court of Rankin County, Mississippi (Exhibit B), and the case was assigned case number 62,607.

On December 14, 2007 a trial of the case was heard before Hon. Dan Fairly in the Chancery Court of Rankin County, Mississippi; and the relief sought by the City of Brandon was granted. and the injunction issued.

On January 4, 2008 the Appellant/John T. Whitley, filed a Motion For New Trial and or Reconsideration pursuant to Rule 62 M.R.C.P. along with a Notice of Appeal and a Designation of Record; On January 10, 2008 the Chancellor entered an Order Denying the Appellant's Motion For New Trial.

APPLICABLE LAWS OF THE STATE OF
MISSISSIPPI IN REGARDS TO THIS CASE

The issue is whether or not the County Court has the authority to transfer a case to a superior court?

It has long been established under the laws of the State of Mississippi, that when a suit is commenced in a court having no jurisdiction, it is not within the power of the judge to transfer it to another court which has jurisdiction. This basis principal of law was established back in 1879 in the case of Breckenridge vs. Johnson 57 Miss. 371. Breckenridge established the fact that an inferior court that has no subject matter jurisdiction does not have the authority to transfer the case to a superior court that has such jurisdiction. "The County Court lacked subject matter jurisdiction and had no authority to act upon the cause other than to enter an Order of Dismissal for lack of jurisdiction.

The Mississippi Supreme Court noted in Breckenridge at page 375 , "When a suit is commenced in a court having no jurisdiction,

it is not in the power of its ministerial officers to transfer it to another court which has jurisdiction. The proper mode is to dismiss it, and then commence anew in the proper court."

Judge Kent McDonald, the County Court Judge of Rankin County, Mississippi found that he did not in fact have subject matter jurisdiction of the case before him; therefore he did not have the authority to transfer the action to the Chancery Court the proper thing for him to do would to have entered an Order dismissing the Plaintiff's Complaint.

Further, it has been a long established principal of law in the State of Mississippi, that the parties themselves cannot agree to jurisdiction, but that the Court must have jurisdiction in order to act upon an action brought before it; without the proper jurisdiction, all actions of the Court not having proper jurisdiction was void ab-nitio.


Applying these standards of law to the case now before this court; the action was clearly not brought to the Chancery Court of Rankin County, Mississippi under the laws of the State of Mississippi and therefore all proceeding and rulings of the Chancery Court of Rankin County, Mississippi in this case were null and void and otherwise unenforceable.

CONCLUSION

It is clear from Judge McDaniel's Order, that he did not have subject matter jurisdiction in this case and further he did not have the authority to "transfer" the City of Brandon action to

a superior court, in this case the Chancery Court of Rankin County, Mississippi as was done herein; the only authority that he had due to the fact that he had no subject matter jurisdiction was to dismiss the City of Brandon's Complaint and enter an Order of Dismissal. The County Court Judge did not have authority to Order anything further for "lack of jurisdiction".

Respectfully submitted on this the 10th day of August, 2008.


HARRY J. ROSENTHAL-ATTORNEY
FOR APPELLANT-JOHN T. WHITLEY

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CERTIFICATE OF SERVICE

I, Harry J. Rosenthal, do hereby certify that I have this day served by United States Mail, postage prepaid or hand delivered a true and correct copy of the above Appellant's Rebuttal Brief to the following:

HON. KENT McDANIEL
County Court Judge-Rankin County, Ms.
P.O. Box 1599
Brandon, Mississippi 39043

Chancellor Dan Fairly
Rankin County Chancery Ct. Judge
Post Office Box 1437
Brandon, Mississippi 39043

Hon. Mark C. Baker, Sr.
BAKER LAW FIRM
ATTORNEY AT LAW
Post Office Box 947
Brandon, Mississippi 39043

So certified on this the 15th day of August, 2008.


HARRY J. ROSENTHAL- ATTORNEY FOR
APPELLANT- JOHN THELBERT WHITLEY

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ATTORNEY FOR APPELLANT

and all its contents for transfer to the Chancery Court of Rankin County and to accomplish same as expeditiously as reasonably possible so that the parties may be promptly heard on the merits in that Court. Any transfer fee will be assessed to Defendant. km

SO ORDERED, this the 28th day of November, 2008.

Kent McDaniel
Kent McDaniel
County Judge

IN THE COUNTY COURT OF RANKIN COUNTY, MISSISSIPPI

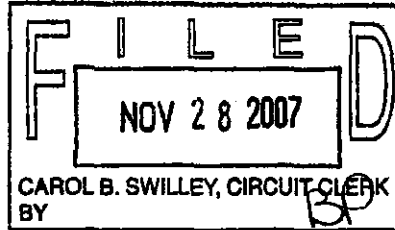
CITY OF BRANDON, MISSISSIPPI

PLAINTIFF

V.

JOHN THELBERT WHITLEY

DEFENDANT



CAUSE NO. 2007-1267

ORDER TRANSFERRING CAUSE TO CHANCERY COURT

THIS MATTER having come before the Court for hearing on the merits, and the Defendant having raised the defense of lack of jurisdiction by this Court to entertain the Complaint and provide the relief requested, namely the enforcement against Defendant of certain zoning and other applicable ordinances of the City of Brandon, and the Court having heard the argument of the parties and having reviewed the briefs and case law provided does find that the motion is well taken and should be granted.

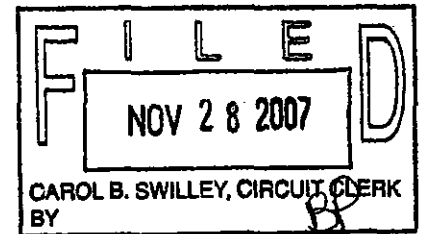
The Court specifically finds that the injunctive enforcement of the ordinances of a political subdivision is a matter within the original jurisdiction of the Chancery Court and may not, without some underlying jurisdiction within this Court, be entertained here in the first instance, all pursuant to the provisions of *Section 9-9-23, Miss. Code Ann.* and related cases. The Court notes that no case was presented for the proposition that the County Court is empowered to hear and determine such cases pursuant to its original jurisdiction. Accordingly, the case must be transferred to the Court having unquestioned plenary jurisdiction, the Chancery Court of Rankin County, Mississippi

IT IS, THEREFORE, ORDERED, that this cause is forthwith transferred to the docket of the Rankin County Chancery Court, and the Circuit Clerk is directed to prepare the file

2-AC

CAROL B. SWILLEY
RANKIN COUNTY CIRCUIT CLERK
P.O. BOX 1599
BRANDON, MISSISSIPPI 39043

NOVEMBER 29, 2007



CITY OF BRANDON, MISSISSIPPI

PLAINTIFFS

VS

CAUSE NO. 2007-1267

JOHN THELBERT WHITLEY

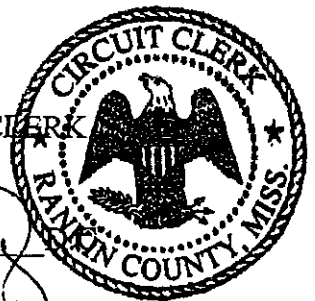
DEFENDANTS

CLERK'S CERTIFICATE OF TRANSFER

I, CAROL B. SWILLEY, CIRCUIT CLERK, OF THE CIRCUIT & COUNTY COURT OF RANKIN COUNTY, MISSISSIPPI, HEREBY CERTIFY THAT THE ATTACHED AND FORGOING ARE TRUE AND CORRECT COPIES OF ALL PLEADINGS, AND ALL OTHER DOCUMENTS AS SAME APPEAR OF RECORD ON FILE IN THE ABOVE STYLED, CASE, IN THE OFFICE OF CIRCUIT CLERK AT BRANDON, RANKIN COUNTY, MISSISSIPPI. THIS CAUSE IS TRANSFERRED TO THE CHANCERY COURT OF RANKIN, COUNTY, MISSISSIPPI.

CAROL B. SWILLEY, CIRCUIT CLERK
RANKIN COUNTY, MISSISSIPPI

BY: *Carol B. Swilley*



PLEASE ACKNOWLEDGE RECEIPT OF CASE RECORD/RECORDS AND RETURN COPY OF THIS FORM TO THE RANKIN COUNTY CIRCUIT CLERK'S OFFICE.

RECEIVED BY: *Rankin Chancery Court*
DATE: *11-28-07* - *Mail John De.*

MAIL BACK TO: CAROL B. SWILLEY
P.O. BOX 1599
BRANDON, MS. 39043