

IN THE SUPREME COURT OF MISSISSIPPI

TUNICA COUNTY, MISSISSIPPI; AND CALVIN
HAMP, SR., INDIVIDUALLY,

DEFENDANTS/APPELLANTS,

VS.

CAUSE NO. 2008-CA-00756

THE HAMPTON COMPANY NATIONAL
SURETY, LLC, A MISSISSIPPI LIMITED LIABILITY
COMPANY; AND JAMES DEAN, AN INDIVIDUAL,

PLAINTIFFS/APPELLEES.

BRIEF OF APPELLEES

APPEAL FROM CIRCUIT COURT OF TUNICA
COUNTY, MISSISSIPPI, CASE NO. 2005-0391

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ORAL ARGUMENT REQUESTED

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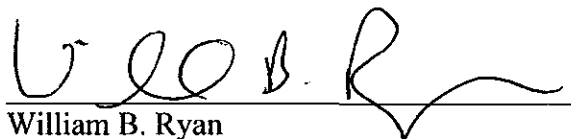
THE HAMPTON COMPANY NATIONAL
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COMPANY; AND JAMES DEAN, AN INDIVIDUAL,

PLAINTIFFS/APPELLEES.

I. CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities have an interest in the outcome of this appeal. These representations are made in order that the Justices of the Supreme Court of Mississippi and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. The Honorable Charles E. Webster, Circuit Judge
2. The Hampton Company National Surety, LLC, Appellee
3. James Hampton Gardner, Appellee
4. James Dean, Appellee
5. James D. Harper, Counsel for Appellees
6. William B. Ryan, Counsel for Appellees
7. Stroud & Harper, P.C., Counsel for Appellees
8. Donati Law Firm, LLP, Counsel for Appellees
9. Calvin Hamp, Sr., Appellant
10. Tunica County, Appellant
11. John S. Hill, Counsel for Appellants
12. Stephen P. Spencer, Counsel for Appellants
13. Mitchell, McNutt & Sams, P.A., Counsel for Appellants



William B. Ryan
Counsel for Plaintiffs/Appellees

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IV. STATEMENT OF THE ISSUE

Whether the trial court erred in holding that Sheriff Hamp did not have the authority under Mississippi law to prohibit Hampton, a limited surety bail agent, and Dean, Hampton's soliciting bail agent, from writing bonds in Tunica County.

V. STATEMENT OF THE CASE

A. Course of Proceedings

1. State Court

Plaintiffs sued Defendants for monetary damages, declaratory relief and injunctive relief on December 22, 2005. The Defendants subsequently filed a motion to dismiss on October 17, 2006. A hearing was held before Honorable Charles E. Webster on November 28, 2007. On January 16, 2008, the trial court granted the Defendants' motion to dismiss concerning the Plaintiffs' claim for money damages. But, on April 3, 2008, the trial court granted on the merits Plaintiffs' claims for declaratory relief and injunctive relief determining that Sheriff Hamp lacked authority under Mississippi law to prohibit the Plaintiffs from writing bonds in Tunica County.

2. Federal Court

Plaintiffs also sued Defendants in the United States District Court for the Northern District of Mississippi on January 23, 2006 alleging that the Defendants violated the Plaintiff's rights under the Due Process Clause; the Equal Protection Clause; and the First Amendment. On October 1, 2007, the district court granted the Defendants' motion for summary judgment in its entirety. The Plaintiffs subsequently appealed the case to the United States Court of Appeals for the Fifth Circuit.

On September 18, 2008, the Fifth Circuit issued an opinion affirming in part and reversing in part the district court's grant of summary judgment. *Hampton Co. Nat. Sur., LLC v. Tunica County, Miss.*, 2008 WL 4274462 (5th Cir. Sept. 18, 2008). The Fifth Circuit reversed summary judgment in favor of the Defendants as to the Plaintiffs' Equal Protection claim and their First Amendment claim. *Id.* at **7-9. And while the Fifth

Circuit affirmed summary judgment granting qualified immunity to Sheriff Hamp on the Plaintiff's Due Process claim, the Fifth Circuit reversed summary judgment in favor of Tunica County on the Plaintiff's Due Process claim and remanded the case for further proceedings. *Id.* at **2-6.

Although prior Fifth Circuit cases seemed to interpret Mississippi law as granting sheriffs the statutory authority to prohibit bonding agents from writing bonds, the Fifth Circuit cited to Judge Webster's rejection of Fifth Circuit precedent, as well as the Defendants' appeal of Judge Webster's decision, as a basis for remanding the case to the district court. *Id.* at *6. In sum, the Fifth Circuit noted that Tunica County may face liability for violating Plaintiffs' Due Process rights if Mississippi appellate courts affirm Judge Webster's decision. *Id.*

B. Factual Background

James Hampton Gardner (Gardner or Hampton) is a licensed Professional Bond Agent and is qualified as a Limited Surety Agent with the Mississippi Department of Insurance. (R. Vol. 1, at 13-14). Gardner operates a bail bonding business as The Hampton Company National Surety, LLC (Hampton). (R. Vol. 1, at 14). James Dean (Dean) is licensed with the Mississippi Department of Insurance as a Bail Soliciting Agent and a Bail Enforcement Agent for Hampton. (R. Vol. 1, at 13-14).

On February 15, 2005, Sheriff Calvin Hamp, Sr. (Hamp), acting in his capacity as Sheriff of Tunica County (Tunica), removed Hampton and Dean from the bail bonding roster, and prohibited them from writing any bail bonds in Tunica County. Hamp took this action purportedly because of a report he

received from the Circuit Court of Tunica County that Hampton was in arrears on three bonds for criminal defendants who failed to appear for their state court arraignment on February 15, 2005. (R. Vol. 1, at 10-11; Exhibit, Vol. 2, Hamp Dep. at 23-26). During this time, it is undisputed that Dean's and Gardner's licenses were in good standing with the Mississippi Department of Insurance. Although the Department of Insurance took no action, Dean and Gardner were prohibited from writing bonds in Tunica County, which has had a resonating effect on their ability to write bonds in other counties because some sheriffs require a letter of good standing from a bail bondsman's domicile sheriff. (R. Vol. 1, at 16, 19-20).

The three criminal defendants that were at issue were all accounted and arraigned within 45 days of the February 15, 2005 arraignment date. (R. Vol. 1, at 11). Indeed, the Circuit Clerk's criminal court docket of March-April 2005 indicates that Sharry Perkins and Calvin Franklin were arraigned in court on February 17, 2005 and Valerie Johnson appeared in court for arraignment on March 30, 2005. (Exhibit, Vol. 5, Granberry Dep. Exh. 13). As such, it is undisputed that Dean and Gardner were never in arrears under Mississippi law regarding the due date for bail bonds. Notwithstanding this fact, Tunica County and Hamp continued to prohibit Dean and Hampton from writing bonds for at least another year and a half. (R. Vol. 1, at 11-12; Exhibit, Vol. 2, Hamp Dep. 73). Although Tunica County and Sheriff Hamp also took other bail bond agents off the Bail Bonding Roster for purportedly being in arrears during this same time, most, if not all, of these agents were placed back on the roster within a short time thereafter. (Exhibit, Vol. 2, Hamp Dep. 69); (Exhibit, Vol. 1, Dean Dep. 18-19).

During this time, neither Hamp nor anyone else from the County ever inquired into or allowed Dean or Gardner to cure this issue regarding the purported arrearage. (Exhibits, Vol. 3, Granberry Dep. 40-41). There were no specific procedures regarding this unusual way of handling bail bonds and the curing of a purported arrearage. (Exhibits, Vol 2, Hamp Dep. 21, 67-79); (Exhibits, Vol. 3, Granberry Dep. 21-23, 34-35). Although Dean made several attempts to discuss this issue with Sheriff Hamp, it was to no avail because Sheriff Hamp did not want to talk to bail bondsmen. (Exhibits, Vol. 1, Dean Dep. 22-27); (Exhibits, Vol. 2, Hamp Dep. 39, 53-54).

Sheriff Hamp also testified in his deposition that he suspended Dean from writing bonds in Tunica County based upon an internal affairs investigation and statement from a competing bail bonding company, dating back to August of 2004. (Exhibits, Vol. 2, Hamp Dep. 38-56.). At no time prior to February 2005, however, did anyone advise Dean that he could not write bonds in Tunica County. Tunica County and Hamp have not provided any written evidence to verify that that was the reason that they prohibited Dean from writing bail bonds in Tunica County. (Exhibits, Vol. 2, Hamp Dep. 38-56). Prior to December 2006, neither Dean nor Hampton were informed that the reason for the prohibition of Dean writing bonds in Tunica County was because of an internal affairs investigation. (R. Vol. 1, at 10-12). Tunica County and Hamp purportedly placed Gardner back on the bail bonding roster around December 2006, but not Dean. (Exhibits, Vol. 2, Hamp Dep. 23, 40, 73).

VI. SUMMARY OF ARGUMENT

The trial court correctly granted declaratory relief and injunctive relief to Hampton and Dean. Tunica and Hamp cannot cite to any Mississippi statute that gives Hamp the power to do what he did in this case, which is to prohibit Hampton, a licensed limited surety bail agent, and Dean, Hampton's soliciting agent, from writing bonds in Tunica County. Sheriff Hamp violated Hampton and Dean's rights under Mississippi law when he prohibited Hampton and Dean -- without any grant of statutory authority -- from writing bonds in Tunica County. In addition to the lack of Mississippi statutory authority, the trial court properly held that the Fifth Circuit opinions and Mississippi attorney general opinions cited by Tunica and Hamp do not provide persuasive authority for the proposition that sheriffs have discretionary authority to prohibit limited sureties from writing bonds. Therefore, the trial court's decision should be affirmed.

VII. ARGUMENT

A. Standard of Review

The declaratory judgment sought by Hampton and Dean involves a question of law. "A declaratory judgment sets out the law and is binding as to the rights of the parties." *Hall v. Bowman*, 749 So.2d 182, 183 (Miss. Ct. App. 1999). The Mississippi Supreme Court is the ultimate expositor of Mississippi law. *Id.* (citing *UHS-Qualicare, Inc. v. Gulf Coast Community Hosp., Inc.*, 525 So.2d 746, 754 (Miss. 1987)). Therefore, the standard of review is *de novo*. *Id.*

An order granting injunctive relief is reviewed to determine whether the trial court committed manifest error or lacks substantive evidence to support the relief ordered. *Bosarge, v. State ex rel. Price*, 666 So.2d 485, 489 (Miss. 1995).

B. The Trial Court Properly Granted the Plaintiffs' Request for Declaratory Relief and Injunctive Relief

In an order filed on April 3, 2008, the trial court granted Hampton and Dean's request for declaratory relief and injunctive relief rejecting Tunica and Hamp's argument that Hamp, as Sheriff of Tunica County, possessed the statutory authority to prohibit Hampton, a limited surety agent, and Dean, Hampton's soliciting agent, from writing bonds in Tunica County. On appeal, Tunica and Hamp argue that the trial court erred in holding that Hamp lacked the statutory authority to prohibit Hampton and Dean from writing bonds in Tunica County.

In their opening brief, Tunica and Hamp rely principally on Miss. Code Ann. § 19-25-67 for the proposition that Hamp is granted "some limited authority within his county" to "reject bonds from any bondsman or bonding company regardless of status, especially if necessary to maintain the peace and control jail administration." (Appellants' Opening Brief at 6-7). Tunica County and Hamp also rely on the Fifth Circuit's reported decision in *Baldwin v. Daniels*, 250 F.3d 943 (5th Cir. 2001) and its unpublished decision in *Richards v. City of Columbus*, 1993 WL 413911 (5th Cir. Oct. 12, 1993) for the proposition that Hamp possessed discretionary authority under Mississippi law to prohibit Hampton and Dean from writing bonds in Tunica County. (Appellants' Opening Brief at 7-9). Finally, Tunica and Hamp rely on various opinions issued by the Mississippi Attorney General in support of its argument that Hamp was permitted by Mississippi law to prohibit Hampton and Dean from writing bonds in Tunica County. (Appellants' Opening Brief at 9-10). But a close examination indicates that each of these arguments must fail.

1. **Sheriff Hamp is not granted authority under Miss Code Ann. § 19-25-67, which would allow him to prohibit limited sureties from writing bonds in Tunica County.**

Tunica and Hamp understand that the authority permitting Hamp to prohibit a limited surety from writing bonds in Tunica County must be granted by statute. In other words, for Hamp to prohibit Hampton and Dean from writing bonds in Tunica County, Hamp must be able to identify a Mississippi statute that grants him such authority. Importantly, the only statute cited by Tunica and Hamp in their brief as providing Hamp with such authority is Miss. Code Ann. § 19-25-67, which provides as follows:

Duty to Maintain Peace

It shall be the duty of every sheriff to keep the peace within his county, by causing all offenders in his view to enter into bonds, with sureties, for keeping the peace and for appearing at the next circuit court, and by committing such offenders in case of refusal. He shall certify and return said bonds to the court. It shall be his duty to quell riots, routs, affrays and unlawful assemblages, and to prevent lynchings and mob violence, and wherever necessary he shall call to his aid the power of the county. Any person who shall fail, neglect or refuse to respond to the call of the sheriff for such aid shall be reported by the sheriff to the circuit court, and it shall be his duty to prosecute all such persons, who, upon conviction, shall be punished as for a misdemeanor. He shall pursue, apprehend, and commit to jail all persons charged with treason, felony, or other crimes. He may take bonds, with good and sufficient sureties, of any person whom he may arrest with or without a warrant for any felony that is bailable as a matter of law. He may fix the amount of such bonds, only in emergency circumstances. "Emergency circumstances" means a situation in which a person is arrested without a warrant and cannot be taken before a judicial officer for a determination of probable cause within a reasonable time, or within forty-eight (48) hours, whichever is the lesser, after the arrest.

Any sheriff who wilfully fails, neglects or refuses to perform any of his duties as prescribed in this section shall be guilty of a misdemeanor and prosecuted therefor, and upon conviction thereof he shall be removed from office.

Miss. Code Ann. § 19-25-67.

In particular, Tunica and Hamp argue that the language of this statute indicates that sheriffs are “not required to take a bond from a particular bondsman” under Mississippi law and that Mississippi sheriffs may reject bonds submitted by limited sureties. (Appellants’ Opening Brief at 7). But such a broad and over-reaching interpretation is not supported by the plain language of the statute nor is such an interpretation reasonable in light of the statutory scheme governing bail bondsmen as enacted by the Mississippi legislature.

Here, it is undisputed that the language of Miss. Code Ann. § 19-25-67 does not expressly provide that sheriffs have the authority to do what Hamp did in this case, i.e., prohibit a limited surety from writing bonds in a particular county. Indeed, Tunica and Hamp have not attempted to argue that the plain language of the statute compels such a conclusion.

Instead, Tunica and Hamp contend that the phrases “[h]e may take bonds, . . .” and “[h]e may fix the amount of such bonds, . . .” necessarily imply that Hamp possessed the discretionary authority to prohibit Hampton and Dean from writing bonds in Tunica County. But such an interpretation is not reasonable when this statute is compared to Miss. Code Ann. § 83-39-15, which expressly grants authority to the Mississippi Department of Insurance (and no other entity) to deny, suspend or revoke a bail bondsman’s license. *Davis-Everett v. Dale*, 926 So.2d 279, 282 (Miss. Ct. App. 2006) (explaining that Commissioner of Insurance has explicit authority under Miss. Code Ann. § 83-39-15 to discipline bail agent). In other words, the Legislature knows how to grant authority to take action prohibiting a limited surety from writing bonds when it wants to do so.

Additionally, the language in Miss. Code Ann. § 19-25-67 simply describes the duty of sheriffs to keep the peace within their counties and explains how this is to be accomplished. Again, there is no grant of authority found in the statute by which Hamp could have believed he had the power to discipline limited surety agents. The statute's directive is to keep the peace, not a grant of discretionary authority regarding the regulation of the bail bonding business. At best, the statute describes a very limited "emergency" situation whereby a sheriff may fix the amount of such bonds, but that situation certainly does not apply in this case. Finally, the statute only gives the sheriff the authority to take a bond of "any person whom he may arrest ... for any felony that is bailable as a matter of law." It is a stretch to interpret the statute as providing a clear grant of discretionary authority to sheriffs desiring to prohibit licensed bail bondsman from using their state-wide license.

Further, as noted by the trial court, Miss. Code Ann. § 83-39-1 *et seq.* sets forth the qualification, licensing, and disciplinary procedures for bail bondsmen. Given the field-occupying/detailed statutory scheme enacted by the Mississippi legislature, the trial court held as follows:

Being of the opinion that bails and bail bonding is a matter now completely governed by Mississippi statute and finding that Miss. Code Ann. § 83-39-15 restricts the authority to suspend and/or revoke a bail bonding license to the Mississippi Department of Insurance, this court hereby declares that the sheriff of Tunica County, Mississippi, lacked the authority to suspend or revoke the bail bonding privileges of Hampton and/or Dean. As such, this court further finds that the conduct of the sheriff was not in compliance with Mississippi Law.

(R. Vol. 3, at 396: April 3, 2008 Order at 6, ¶ 7).

Accordingly, not only was the trial court's decision based in part on the lack of statutory authority that expressly grants power to a sheriff to approve bail bonds or sureties on bail bonds issued by a licensed fidelity or surety insurance company, it was also based in part on the comprehensive regulatory scheme enacted by the Mississippi legislature with respect to limited surety agents. (R. 3, at 384-85; Jan. 16, 2008 Order at 26-27, ¶ 41).

In a case remarkably similar to the instant case, a district court in Arkansas, applying Arkansas law, which has a near identical regulatory scheme to Mississippi, held that a sheriff's suspension of a bonding company's authority to issue bonds in a single county was the equivalent of a suspension of the bonding company's state-issued license. *Holt Bonding Co., Inc. v. Nichols*, 988 F.Supp. 1232, 1235 (W.D. Ark. 1997). In *Holt Bonding Co.*, the district court held that the sheriff did not possess any statutory authority to disqualify a professional bail bondsman or professional bail bond company. The court found that the authority to prohibit a bonding company from writing bonds was the province of the Board set forth in Ark. Code Ann. § 17-19-210, which stated that the Board may suspend a license for various violations of the rules and regulations governing bail bondsmen and bail bond companies. *Id.* at 1235-36. Citing to Ark. Code Ann. § 17-19-209, the district court stated that if the sheriff was concerned about the bonding company's failure to forfeit bonds, he should have filed a complaint alleging such violations and the Board would have conducted a hearing on the issue. *Id.* at 1236.

The same is true in the instant case. If Hamp wanted to take action against Hampton and Dean because he believed that they were in arrears or he believed that they were unfit to write bonds for some other reason, he should have filed a complaint with

the Mississippi Insurance Commissioner and allowed the hearing process described at Miss. Code Ann. § 83-39-17 to run its course or allow the judicial process described at Miss. Code Ann. § 83-39-21 to run its course. But instead, Hamp acted without any statutory authority to significantly impair the bonding licenses issued to Hampton and Dean by the Mississippi Department of Insurance.

2. **The trial court properly held that that Fifth Circuit's decisions in *Baldwin* and *Richards* are not persuasive authority that Hamp was permitted under Mississippi law to prohibit Hampton and Dean from writing bonds in Tunica County.**

In response to Tunica and Hamp's suggestion that the Fifth Circuit's decisions in *Baldwin* and *Richards* provided persuasive authority for its argument that Hamp was permitted under Mississippi law to prohibit Hampton and Dean from writing bonds in Tunica County, the trial court thoroughly analyzed the decisions and concluded that *Baldwin* and *Richards* were not persuasive. The trial court noted that both decisions relied solely on a statute governing municipal court proceedings (i.e., Miss. Code Ann. § 21-23-8) in rejecting the plaintiffs' federal claims for deprivation of property without due process. (R. Vol. 3, at 395: April 3, 2008 Order at 5, ¶ 4); (R. Vol. 3, at 381-83: Jan. 16, 2008 Order at 23-25, ¶ 39). Indeed, the trial court directly confronted and rejected the basis of the Fifth Circuit's decisions stating

With all due respect to the 5th Circuit and its reliance on this code section [Miss. Code Ann. § 21-23-8] as authority for its decision on this point, it is the opinion of this court that such reliance is misplaced. Miss. Code Ann. 21-23-8 has no application to Circuit Court proceedings and thus no relevance to the instant motion. As such, this statute does not provide the authority which the defendants seek.

(R. Vol. 3, at 383: Jan. 16, 2008 Order at 25, ¶ 39).

On appeal, Tunica and Hamp make the same argument: *Baldwin* and *Richards* hold that a bail bondsman does not have a property interest in writing bonds within a particular county; therefore, these decisions establish that Hamp had authority to prohibit Hampton and Dean from writing bonds in Tunica County. Notably, Tunica and Hamp do not discuss in their opening brief the trial court's principal reason for rejecting *Baldwin* and *Richards* as persuasive authority, i.e., that it would be erroneous and improper to apply the municipal court statute (Miss. Code Ann. § 21-23-8) referenced in *Baldwin* and *Richards* to the facts in this case. But Tunica and Hamp's failure to launch a frontal attack on the trial court's reasoning is not surprising given that in *Baldwin* the only statutory provision cited by the Fifth Circuit for the proposition that Mississippi sheriffs have the discretion to prohibit a bail bondsman from writing bonds in a particular county was Miss. Code Ann. § 21-23-8. In sum, the trial court correctly held that the Fifth Circuit's decisions in *Baldwin* and *Richards* are not persuasive authority.

3. The trial court properly held that the Mississippi Attorney General opinions do not provide persuasive authority that Hamp had authority to prohibit Hampton and Dean from writing bonds in Tunica County.

In response to Tunica and Hamp's argument that the Mississippi Attorney General has recognized that a sheriff has the discretion to suspend a bail bondsman's ability to write bonds, the trial court appropriately criticized Tunica and Hamp for relying on a 1992 Mississippi attorney general opinion¹ for the proposition that a sheriff cannot be forced to approve the surety of any bail bond since a sheriff may be liable under Miss. Code Ann. § 99-5-19 if the bond becomes insufficient. (R. Vol. 3, at 383-84; Jan. 16,

¹ Miss. Atty. Gen. Op. 1992 WL 613907, Thompson (May 7, 1992)

2008 Order at 25-26, ¶ 40). As the trial court explained in citing to a 2004 Mississippi attorney general opinion, Tunica and Hamp's reliance on the 1992 opinion was dubious in light of the fact that the opinion was issued prior to an amendment to Miss. Code Ann. § 99-5-19, which expressly excepted a sheriff from personal liability for an insufficient bond when it was tendered by a limited surety backed by an insurance company. *Id.* On appeal, Tunica and Hamp again rely upon the same discredited and inapplicable 1992 attorney general opinion. But for the same reason articulated by the trial court, this Court should reject the 1992 attorney general opinion as persuasive authority supporting the argument that a sheriff may prohibit a limited surety for writing bonds.

Tunica and Hamp also argue that a 1998 attorney general opinion² support their argument that a sheriff may refuse to approve the bond from a particular bondsman if there is reasonable cause to do so. But, the persuasiveness of this opinion is highly suspect given that the opinion fails to delineate whether it applies to limited surety agents. Also, rather than granting broad authority to a sheriff to suspend or refuse bonds from a bondsman, the opinion clearly limits the sheriff's authority by stating that a sheriff may not "forbid or prohibit a bondsman from writing bonds for an inmate in the county jail." In other words, to the extent that a sheriff has authority over personal surety agents, such authority is limited to approving a particular bond, not completely forbidding a bondsman to write bonds. But in any event, the point is academic since this case involves limited surety agents. Accordingly, the attorney general opinions cited by Tunica and Hamp do not support their position.

² Miss. Atty. Gen. Op., 1998 WL 92539, Chamberlin (Feb. 6, 1998)

C. The Trial Court Properly Granted Injunctive Relief to Hampton and Dean

The trial court granted the injunctive relief sought by Hampton and Dean in light of its finding that Hamp violated Mississippi law in prohibiting Hampton and Dean from writing bonds in Tunica County. Specifically, the trial court held that “the sheriff of Tunica County, Mississippi, is hereby enjoined from suspending the bail bond license of the plaintiffs Hampton and/or Dean, both now and in the future. The sheriff of Tunica County, Mississippi is further enjoined from removing the plaintiff from any list purporting to be an “approved” bail bond list.” (R. Vol. 3, at 399: April 3, 2008 Order at 9, ¶ 15).

On appeal, Tunica and Dean first argue that the trial court erred in determining that the plaintiffs will prevail on the merits. (Appellants’ Opening Brief at 10-11). As an initial matter, this argument should be considered to be waived by Tunica and Hamp since they failed to make this argument before the trial court. Indeed, whether the plaintiffs will prevail on the merits was not addressed by Tunica and Hamp in its letter brief to the trial court dated January 25, 2008, (R. Vol. 3, at 407-08), which was specifically requested by the trial court to address declaratory and injunctive relief issues. (R. Vol. 3, at 388: Jan. 16, 2008 Order at 30, ¶ 47). But even if the Court considers this argument, the argument should fail because the trial court entered a permanent, as opposed to temporary or preliminary, injunction. This point is clear for the following reasons.

First, there are no facts in dispute, which would require a trial on the merits. This point was recognized by the trial court when it issued the injunction. Further, Tunica and Hamp never argued that disputed factual issues existed that prevented the trial court from

issuing an injunction. Second, the appeal filed by Tunica and Dean was from a final judgment as opposed to an interlocutory appeal. In other words, Tunica and Hamp appealed pursuant to Miss. R. App. P. 4, which governs appeal as of right, rather than Miss. R. App. P. 5, which governs interlocutory appeals by permission. Accordingly, this Court must review whether the permanent injunction, which was entered by the trial court, was appropriate under the circumstances.

To obtain a permanent injunction a party must show an imminent threat of irreparable harm for which there is no adequate remedy at law. *Reynolds v. Amerada Hess Corp.*, 778 So.2d 759, 765 (Miss. 2000). Here, Hampton and Dean argue that the trial court erred in granting injunctive relief because “the injunction is not necessary to prevent an irreparable harm.” (Appellants’ Opening Brief at 11).

With respect to Hampton, Tunica and Hamp argue that Hampton was placed back on the bonding roster during this case; therefore, Tunica and Hamp imply that the issue is moot and Hampton cannot establish irreparable harm. The trial court rejected this identical argument at the proceedings below. Citing to *Mississippi High Sch. Activities Ass’n v. Coleman*, 631 So.2d 768, 772 (Miss. 1994), the trial court held that injunctive relief was necessary and appropriate given that the action complained of was too short in duration to be fully litigated before its expiration and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again. (R. Vol. 3, at 398: April 3, 2008 Order at 8, ¶ 12). Specifically, the trial court determined that the fact that Hampton was reinstated prior to the court’s decision and the fact that Dean remained under suspension (albeit for shifting reasons) indicated that the “capable of repetition yet evading review” doctrine applied in this case. (R. Vol. 3, at 398: April 3, 2008 Order at

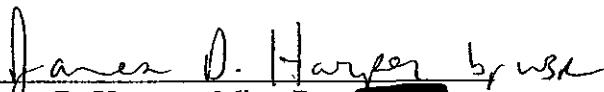
8, ¶ 13). Here, the Court should find that the trial court's decision - to enter the injunction as to Hampton - is well reasoned and supported by facts establishing that there is a reasonable expectation that Hampton would be prohibited by Hamp from writing bonds in Tunica County in the future. Therefore, the injunction ordered by the trial court mandating that Hampton be allowed to write bonds in Tunica County should be affirmed.

Finally, with respect to Dean, Tunica and Hamp also argue that there exists an independent basis for continuing to prohibit Dean from writing bonds in Tunica County, i.e., Dean allegedly admitted to violating Miss. Code Ann. § 83-39-27. Of course, Dean was not informed of this information by Tunica and Hamp until the parties mediated the case in the fall of 2006, approximately 1.5 years after Dean had been prohibited by Hamp from writing bonds in Tunica County. But following the trial court's reasoning, even if Dean did violate Miss. Code Ann. § 83-39-27, which he disputes, no statutory authority exists for Hamp to prohibit Dean from writing bonds on this basis or any other basis. Therefore, the permanent injunction entered by the trial court mandating that Dean be allowed to write bonds in Tunica County should not be disturbed.

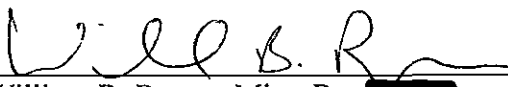
VIII. CONCLUSION

For the foregoing reasons, Hampton and Dean respectfully request that this Honorable Court affirm the trial court's order granting declaratory and injunctive relief to Hampton and Dean.

Respectfully submitted,


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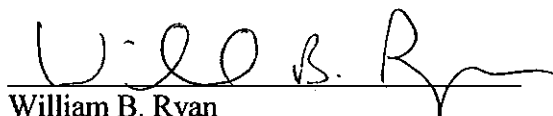
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IX. CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true and correct copy of the foregoing document was served upon the following via first-class U. S. Mail, postage prepaid, on the 29th day of January, 2008:

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X. CERTIFICATE OF FILING

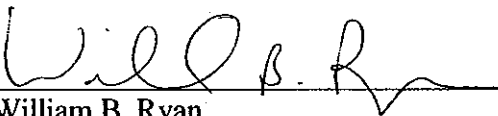
The undersigned attorney certifies that:

(1) the original of the foregoing document, Brief of Appellees, and three true and correct copies of Brief of Appellees, and,

(2) an electronic disk containing Brief of Appellee in Word format (see MRAP 28(m)),

will be personally deposited by me in the United States Mail, and sent via certified mail, return receipt requested, on September 29, 2008, addressed to the Clerk of the Supreme Court of Mississippi as follows:

Ms. Betty Sephton
Mississippi Supreme Court Clerk
P.O. Box 117
Jackson, MS 39205



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