IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CASE NO. 2009-CA-00684

RICHARD A. PREWITT — PLAINTIFF/APPELLANT

VS.

CITY OF OXFORD, MISSISSIPPI,
OXFORD MUNICIPAL COURT, and
LAWRENCE L. LITTLE — DEFENDANTS/APPELLEES

ON APPEAL FROM THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSISSIPPI

BRIEF OF APPELLEES

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representatives are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

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George Dunbar Prewitt, Attorney for Richard A. Prewitt

George Patterson, Appellee
Ernest Oliver, Appellee
Bradley Mayo, Appellee
Janice Antonow, Appellee
Ulysses Howell, Appellee
Preston Taylor, Appellee
John Morgan, Appellee
Ney Williams, Appellee
Lawrence K. Little, Appellee

J. Cal Mayo, Jr.
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MAYO MALLETTE PLLC, Attorneys for the City of Oxford, Mississippi

SO CERTIFIED, this the 26th day of August, 2009.

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One of the Attorneys for City of Oxford, MS

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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CASE NO. 2009-CA-00684

RICHARD A. PREWITT — PLAINTIFF/APPELLANT

VS.

CITY OF OXFORD, MISSISSIPPI,
OXFORD MUNICIPAL COURT, and
LAWRENCE L. LITTLE — DEFENDANTS/APPELLEES

BRIEF OF THE APPELLEES

STATEMENT OF ISSUES

1. Whether a criminal defendant may avoid a direct *de novo* appeal of his municipal court conviction by seeking a writ of mandamus against the convicting judge.

2. Whether the Circuit Court abused its discretion in awarding sanctions for Appellant's frivolous pleadings.

3. Whether the Court should award additional damages and costs for this frivolous appeal.

STATEMENT REGARDING ORAL ARGUMENT

Appellees submit that the facts and legal arguments are adequately presented in the briefs and record in this case. Oral argument would not significantly aid the Court in its decisional process. Appellees respectfully suggest that the Court not schedule oral argument in this case. *See* MISS. R. APP. P. 34(a).

STATEMENT OF THE CASE

A. Nature of the case.

This frivolous appeal began as a petition for a writ of mandamus filed as a collateral attack to Appellant's misdemeanor conviction for possessing alcohol as a minor in the City of Oxford's Municipal Court.

B. Course of the proceedings and statement of facts.

On November 19, 2008, Appellant was convicted of possession of alcohol by a minor in the Municipal Court of Oxford, Mississippi ("the Municipal Court"). Municipal Court Judge Lawrence L. Little ("Judge Little") imposed a fine and probation and ordered Plaintiff to attend an alcohol training course and perform several days of community service.

On November 26, 2008, Plaintiff filed a "Complaint and Motion" in the Circuit Court of Lafayette County seeking a writ of mandamus against the City, the Municipal Court, and Judge Little.[1] Appellant's lawsuit was not filed as a direct appeal of Plaintiff's conviction, and he did not serve or provide notice to the City Prosecutor, the official charged under the law with defending an appeal of a criminal conviction on the City's behalf.

On December 9, 2008, a document bearing the style of the civil action and entitled "Summons" was delivered to City Clerk Lisa Carwyle. This "Summons" was neither signed nor sealed by the Lafayette County Circuit Clerk.

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[1]There is no separate legal entity known as the "Oxford Municipal Court" that may sue or be sued and the allegations against Judge Little appear to have been made against him only in his official capacity as the City's Municipal Court Judge. For the sake of simplicity, all Appellees are referenced collectively as "the City."

Appellant's counsel, George Dunbar Prewitt, also sent a copy of the "Complaint and Motion" to the City's general counsel on December 9, 2008. On that same day, the City's attorney sent a letter to Mr. Prewitt pointing out that a petition for a writ of mandamus is not a valid means of appeal from a judgment in justice or municipal court and demanding that Appellant withdraw his claims or risk sanctions under Rule 11 or the Mississippi Litigation Accountability Act.

Rather than withdrawing the Complaint and Motion, Appellant filed a "Motion for Hearing and for Injunctive Relief" on December 10, 2008, demanding an immediate hearing, before the deadline for posting the bonds necessary for a direct appeal of his conviction. The City filed a Motion to Dismiss and for Sanctions on December 16, 2008.

On December 19, 2008, after the Circuit Court had not granted his request for an immediate hearing, Appellant noticed a direct *de novo* appeal of his Municipal Court conviction. Upon learning that this appeal had been filed, counsel for the City again wrote Appellant's counsel and demanded that Appellant voluntarily dismiss the civil action. Instead, on January 5, 2008, Plaintiff sought issuance of a proper summons from the Circuit Clerk's office and caused such summons to be served upon the City. The City supplemented its Motion to Dismiss and for Sanctions with this information on January 12, 2009.

The Circuit Judges of District 3 thereafter recused themselves and this Court assigned Honorable Albert Smith to preside over the matter. The City noticed a hearing on its Motion to Dismiss and for Sanctions at the Bolivar County Courthouse on March 11, 2009, Judge Smith's regularly-scheduled hearing date, but only after notifying Appellant's counsel of the available date and seeking his input. Though Bolivar County was a more convenient venue for both the Court and Appellant's counsel (who lists a Greenville address), Appellant's attorney filed a motion demanding

that the Circuit Court relocate the hearing to Lafayette County because he wished to call witnesses to the hearing on the City's 12(b)(6) Motion. When the Circuit Court did not respond, Prewitt sought the same relief from the Supreme Court (Cause No. 2009-AP-00162), which was denied. After hearing both parties' arguments, the Circuit Judge announced his intention to grant the City's Motion to Dismiss and requested additional information related to the City's Motion for Sanctions. On March 23, 2009, the City filed a Supplement to its Motion for Sanctions containing extensive information about its attorneys' work on the matter and their fees incurred. The City provided the Court with additional information and briefing on its Motion for Sanctions on April 7, 2009.

The Circuit Court entered an Order of Dismissal on March 25, 2009. On April 29, 2009, the Circuit Court entered an Order finding that Prewitt's lawsuit was frivolous and ordering Prewitt's counsel to pay the City's attorney fees in the amount of $7,763.15. Prewitt noticed his appeal of both orders on April 23, 2009, and filed a Motion for Emergency Stay and Injunction Pending Appeal with this Court on April 30, 2009. This Court denied that Motion on May 13, 2009.

SUMMARY OF ARGUMENT

Appellant may not seek a writ of mandamus against the City, its departments, or its agents as a substitute for the statutory appeals process by which he may challenge his Municipal Court conviction. All of Appellant's objections to his conviction, including his jurisdictional objections, must be addressed through an appeal *de novo* as provided by law.

The Circuit Court did not abuse its discretion in awarding sanctions against Appellant's attorney. Appellant's civil lawsuit could not succeed, as Mississippi law unequivocally prohibits the relief sought therein. Appellant's attorney refused to dismiss the lawsuit and required the City to spend taxpayer money to defend this frivolous lawsuit and appeal.

Appellant's appeal is also frivolous because it was filed without hope of success, and the Court should award the City additional just damages and costs incurred in defending this matter.

ARGUMENT

A. Standards of review.

A motion to dismiss for failure to state a claim raises an issue of law for the Court to review *de novo*. *See Wilbourn v. Equitable Life Assur. Soc. of the U.S.*, 998 So.2d 430, 434-35 (Miss. 2008). The Court reviews awards of monetary sanctions under the Litigation Accountability Act and MISS. R. CIV. P. 11 for an abuse of discretion. *In re Spencer*, 985 So.2d 330, 336-37 (Miss. 2008).

B. Appellant may not challenge his municipal court conviction through a petition for a writ of mandamus.

A writ of mandamus is an extraordinary remedy that is unavailable as a matter of law when the petitioner has a "plain, adequate, and speedy remedy in the ordinary course of law." MISS. CODE ANN. § 11-41-1. Both UNIF. CIR. AND COUNTY CT. R. 12.02 and MISS. CODE ANN. § 99-35-1 provide that appeals from justice and municipal courts are to be made to the circuit court of the county in which the conviction was taken. Such appeals are to be tried *de novo*. UCCCR 12.02(c). This Court has held that when the jurisdiction of a justice court is challenged, a trial *de novo* in circuit court affords the defendant "all the legal rights to which he [is] entitled." *Arnold v. State*, 115 So. 885, 886 (Miss. 1928); *see also Stidham v. State*, 750 So. 2d 1238, 1245 (Miss. 1999) ("Any defect in the judgment of the justice court is harmless [when defendant] appealed and received a jury trial *de novo* in circuit court").

In considering a similar situation, this Court recently held that a justice court conviction could not be challenged through a petition for a writ of mandamus. *In re Chisolm*, 837 So. 2d 183

(2003). In *Chisolm*, the petitioner sought mandamus relief after being convicted of a DUI offense *in absentia* by the Hinds County Justice Court. *Id.* at 185-86. In a separate civil action, the petitioner sought a writ of mandamus from the Hinds County Circuit Court, which granted the relief. *Id.* at 186. This Court reversed and held that

> [t]he writ of mandamus was the improper procedural tool to remedy Chisolm's grievances. Hinds County has a county court system and appeals from a justice court are to the county court and the trial is de novo. See MISS. CODE ANN. § 99-35-1; URCCC 12.02. Chisolm and his attorney improperly attempted to circumvent the orderly system of appellate review by asking the circuit court to issue an injunction or a writ of mandamus to give him a new trial in justice court. ***The writ of mandamus is an extraordinary remedy which is not a substitute for appeal.*** Chisolm will suffer no injury in a proper appeal as provided for by law. Under the law, cases before justice court and municipal judges are appealable and are tried de novo before a county judge. The law provides an adequate remedy for Chisolm. The grant of the writ of mandamus was in error. ***There is no reason that any erroneous actions by the justice court cannot be remedied on appeal.***

Id. at 190 (emphasis added)

For the same reasons, The Circuit Court correctly dismissed Appellant's request for mandamus relief against the City, its Municipal Court, and its Municipal Court Judge.

Appellant ignores *Chisolm* and argues that a *trial de novo* was not an adequate remedy because the Municipal Court lacked jurisdiction over him in the first place and, thus, the Circuit Court lacked jurisdiction to entertain such a direct appeal. Appellant's Br., at 18-20. First, even if Appellant were correct that the Municipal Court lacked original jurisdiction over him (a question not presented by this appeal), the Circuit Court enjoys the inherent authority to consider its own jurisdiction and, when it sits as an appellate court, that of lower or intermediate courts. *See, e.g.*, *U.S. Catholic Conf. v. Abortion Rights Mobilization*, 487 U.S. 72, 79 (1988) ("Nothing we have said puts in question the inherent and legitimate authority of the court to issue process and other binding

orders. . . as necessary for the court to determine and rule upon its own jurisdiction, including jurisdiction over the subject matter."); *U.S. v. Shipp*, 203 U.S. 563, 573 (1906) ("Until its judgment declining jurisdiction should be announced, [appellate court] had authority from the necessity of the case to make orders to preserve the existing conditions and the subject of the petition ...."); *Penrod Drilling Co. v. Bounds*, 433 So. 2d 916, 924 (Miss. 1983) (Robertson, J., specially concurring) ("I would begin by emphasizing that every court has jurisdiction to determine its own jurisdiction.").

Appellant claims that *Std. Fin. Corp. v. Breland*, 163 So. 2d 232 (Miss. 1964) demonstrates the Circuit Court's lack of appellate jurisdiction over his direct appeal. In *Breland*, the Supreme Court noted that the circuit court had dismissed an appealed justice court matter because the amount in controversy exceeded the justice court's jurisdictional limit – the dismissed matter itself was not even appealed to the Supreme Court. 163 So. 2d at 422-23. Appellant's reliance on *In re Moore*, 722 So.2d 465 (Miss. 1998) and *Duvall v. Duvall*, 80 So.2d 752 (Miss. 1955) is similarly misplaced, as neither of those cases holds that a defendant may elect to collaterally attack his municipal court conviction in a separate civil proceeding rather than appeal it as provided by law. In *Moore*, the Attorney General sought extraordinary relief to vacate a judge's order that unlawfully reduced an inmate's sentence; there was no statutory appeals procedure by which to challenge such an action. *Duvall* involved a direct appeal of a domestic property distribution dispute; the Court never even mentions a writ of mandamus.

Appellant objects to the propriety of his Municipal Court convictions. However, even if his objections to his municipal court convictions ultimately succeed, Mississippi law unequivocally precludes him from asserting those objections in a civil action for mandamus relief. The City has

taken no action to preclude Appellant from pursuing a properly-noticed direct appeal of his conviction to the Circuit Court.

C. The Circuit Court did not abuse its discretion in awarding sanctions to the City.

1. Appellant's conduct warranted the imposition of sanctions.

In awarding sanctions against Appellant's attorney, the Circuit Court specifically found that Appellant's lawsuit was a frivolous action that was filed without substantial justification and for the purpose of harassing Appellees. Order Granting Sanctions (April 16, 2009). Unless this Court reaches a "definite and firm conviction" that the Circuit Court "committed a clear error of judgment," in granting sanctions against Appellant's attorney, the sanctions must be affirmed. *In re Spencer*, 985 So.2d 330, 337 (Miss. 2008).

The Litigation Accountability Act of 1988 provides that reasonable attorney fees and costs may be awarded in the discretion of the trial court when a party or his attorney brings an action "without substantial justification," an action that was "interposed for delay or harassment," or when the party or attorney "*unnecessarily expanded the proceedings by other improper conduct.*" MISS CODE ANN. § 11-55-5(1) (emphasis added). A claim is "without substantial justification" under the Litigation Accountability Act when it is "frivolous, groundless in fact or in law, or vexatious." § 11-55-3(a). A claim is "frivolous" when it has no objective hope of success. *See Wilson v. Greyhound Bus Lines*, 830 So. 2d 1151, 1159 (Miss. 2002).

MISS. R. CIV. P. 11 provides for sanctions when a party or attorney files a pleading that is "frivolous or is filed for the purpose of harassment or delay." This Court has held that Rule 11 sanctions are appropriate when a defendant has a "complete defense." *Tricon Metals & Svcs., Inc. v. Topp*, 537 So. 2d 1331, 1337 (Miss. 1989) ("It is the same as if plaintiff filed and pursued a claim

that was clearly barred by the statute of limitations."); *see also Illinois Cent. R. Co. v. Broussard*, No. 2007-CA-01010-COA, 2008 WL 4405166, at *3-4 (Miss. Ct. App. Sept. 30, 2008) (reversing trial court's denial of motion for sanctions, mandating an award of attorney fees and holding that, when defendant "had a complete defense from the moment [the] lawsuit was filed, ... [the suit] falls under the legal definition of a frivolous lawsuit for which sanctions are authorized under Rule 11 and the Act.").

As detailed above, *Chisolm* provides the City with a complete defense to Plaintiff's request for mandamus relief. Appellant and his counsel were well aware of the City's complete defense. On the same day that he received a copy of Appellant's original Complaint, the City's general counsel sent a letter to Appellant's counsel citing *Chisolm* and requesting that Appellant dismiss his civil lawsuit in favor of a direct appeal as provided by statute. *See* Ex. "A" to Defs.' Mot. to Dismiss and for Sanctions (Dec. 16, 2008). After Appellant refused to dismiss his claim and instead noticed a direct appeal of his conviction, the City's counsel again requested that Appellant dismiss his claim, to no avail. *See* Ex. "B" to Defs.' Supp. to Mot. to Dismiss and for Sanctions (Jan. 12, 2009). Appellant admitted in briefing that this action was originally filed to avoid the higher cost of the fees and bonds associated with a direct criminal appeal. *See* Rsp. to Mot. to Dismiss, at 3-4 (Dec. 13, 2008).

Appellant's actions required the City to defend a civil action that lacked any objective hope of success because it was plainly foreclosed by a complete defense. Appellant has unnecessarily expanded the proceedings related to his Municipal Court conviction by maintaining two simultaneous challenges to that conviction upon the docket of the Lafayette County Circuit Court. The Circuit Court did not abuse its discretion in awarding sanctions.

2. The City's request for attorney fees was reasonable.

Appellant does not argue that the amount of monetary sanctions awarded by the Circuit Court was unreasonable or excessive. Instead, he asserts that the Circuit Court did not make sufficient findings to support its award of sanctions. Even if this were true, this Court will not reverse an award of sanctions for a lack of explicit factual findings when a motion for sanctions is supported by sufficient evidence. *See Eatman v. City of Moss Point*, 809 So.2d 591, 593 (Miss. 2000). The Circuit Court is assumed to have made the necessary factual determinations. *Id.*

In fact, ample record evidence supported the award of sanctions. In support of its request for sanctions, the City provided detailed billing related to the fees incurred by its counsel and affidavits from its attorneys and another local attorney attesting to the reasonableness of those fees.. The information provided by the City in support of its Motion for Sanctions specifically addressed the factors set forth in the Litigation Accountability Act, *see* Defs.' Reply and Suppl. in Supp. of Mot. for Sanctions, at 1-2 (April 7, 2009), and the factors contained in MISS. R. PROF'L CONDUCT 1.5(a) and *McKee v. McKee*, 418 So.2d 764 (Miss. 1982), *see* Defs.' Reply and Suppl. in Supp. of Mot. for Sanctions, at Exs. "A" and "B" (April 7, 2009); Defs.' Supp. to Mot. for Sanctions, at Exs. "D," "E," and "F" (March 23, 2009). Appellant did not present any evidence to rebut any of the City's supporting affidavits and documentation of reasonableness, nor has he ever argued that the City's supporting documentation was inadequate or that its request for attorney fees was unreasonable. The Circuit Court's Order Granting Sanctions adopted the information and argument set forth in the City's pleadings in support of its Motion for Sanctions, and this Court should affirm that Order.

D. The Court should award damages for this frivolous appeal.

Under MISS. R. APP. P. 38, this Court"shall award" damages and single or double costs if it finds that an appeal is frivolous. As is the case with MISS. R. CIV. P. 11 and the Litigation Accountability Act, an appeal is "frivolous" under MISS. R. APP. P. 38 if it is made without hope of success. *Harris v. Harris*, 988 So. 2d 376, 380 (Miss. 2008); *In re Spencer*, 985 So.2d 330, 338 (Miss. 2008). Because, as discussed above, the City had a complete defense from the outset of this appeal, Appellant has no hope of success on his appeal. Because this appeal clearly falls under the legal definition of a frivolous appeal, this Court should award additional sanctions against Appellant and/or his attorney.

The taxpayers of the City of Oxford have been unnecessarily and unfairly forced to bear the financial burden of this litigation. Appellant's improper request for mandamus relief has required the City to pay its hourly-paid general counsel to defend this claim. The claim was not covered under any insurance policy maintained by the City, and the salaried City Prosecutor could not be called upon to defend a civil lawsuit to which the City's Municipal Judge was named a defendant. As Appellant has also noticed a direct appeal, the City is left to defend the decision of its Municipal Court *twice*, once through the proper criminal appeals process and once through this unlawful request for civil relief.

Because this appeal was frivolous from the outset, the City requests the Court to award additional sanctions in the form of attorney fees and costs expended in defending this appeal. If granted, the City will supplement this request with documentation of its expenses.

E. Other issues.

Prewitt raises various other issues that have little or no bearing on the issues this Court must decide. To the extent such issues require a response, the City does so below.

1. Substantive issues.

Appellant raises numerous substantive objections to his conviction, only some of which were even mentioned below. These objections include issues of personal and subject matter jurisdiction, the constitutionality of certain state statutes, and whether "Budweiser beer is an alcoholic beverage in Mississippi." Appellant's Br., at 6-7. Because this civil lawsuit was an improper vehicle through which to raise those objections, the Circuit Court did not consider them in granting the City's Motion to Dismiss. No evidence on any of these issues was placed into the record, and the City did not brief any of these issues. Appellant may raise all of these issues in the context of his direct criminal appeal, but they are not now properly before the Court. Even if Appellant's substantive objections are ultimately found to have merit, they were improperly raised in this appeal.

2. Location of hearing on Appellees' Motion to Dismiss.

Citing MISS. CODE ANN. § 11-45-25, Appellant argues that the Circuit Court's Order of Dismissal is void because the Special Circuit Judge appointed by this Court heard argument on the City's Motion to Dismiss in Bolivar County instead of in Lafayette County, where suit was filed. Appellant's Br., at 13-15. The City's attorney scheduled the hearing at the Bolivar County Courthouse on Judge Smith's regularly-scheduled motion hearing day. The location of this hearing was more convenient for Judge Smith and Appellant's attorney (who lists a Greenville address) than was Oxford, where the City's attorneys are located.

Appellant sought to stop the March 11, 2009 hearing by filing a Petition for Emergency Relief with this Court, which the Court denied (Cause No. 2009-M-00374). The hearing went forward, and Appellant's attorney attended. He did not call witnesses, from Lafayette County or from anywhere else, as the hearing was limited to the 12(b)(6) issues.

Even if this Court finds that the Circuit Court and all parties erred by scheduling and attending a hearing in Bolivar County, such error was harmless. Appellant has not alleged that he was harmed or prejudiced in any way; in fact, the location of the hearing would seem to have been more convenient for his attorney. Furthermore, as the City's Motion to Dismiss was a purely legal issue that was comprehensively addressed in the parties' briefs, it is not clear that the Circuit Court was required to hold a hearing at all. *See Croke v. Southgate Sewer Dist.*, 857 So.2d 774, 778 (Miss. 2003) (finding that trial court did not commit reversible error "in granting summary judgment without an oral hearing when the issues have been thoroughly presented in the briefs").

This proceeding was, at all times, on the docket of the Lafayette County Circuit Court. Appellant has cited no authority holding that a hearing in the home court of a specially-appointed judge constitutes a "venue violation" sufficient to void an order of dismissal. Appellant's Br., at 15.

3. Information outside the pleadings.

Appellant also claims that the Circuit Court "went outside the complaint" when it cited statements from *Appellant's own pleadings* in its Order of Dismissal. Appellant's Br., at 17. Appellant claims that his own submissions should have been ignored by the Circuit Court. Appellant's misguided claims would have fared no better if the City's Motion to Dismiss had been converted into a motion for summary judgment, as the City would still have been entitled to judgment as a matter of law. Even if this Court harbors doubts about the language of the Order of Dismissal, the judgment of the Circuit Court must stand. *See Gates v. Gates*, 616 So. 2d 888, 890 (Miss. 1993) ("If the action of the trial judge can be upheld for any reason, we must affirm.") (internal citation omitted).

4. The City's authority to retain counsel.

Appellant also argues that "the firm of Mayo Mallette was not hired in accordance with MCA 25-1-47" because the City did not make "a determination to provide legal counsel to defend Lawrence L. Little **prior** to hiring the firm of Mayo Mallette." Appellant's Br., at 28 (emphasis in original). Section 25-1-47 contains no such requirement. In fact, that statute specifically authorizes the City to provide a defense for its agents and employees.

The City has specific statutory authority to employ a firm of attorneys to represent its interests. MISS. CODE ANN. §§ 21-15-25, -27. The undersigned law firm is the City's general civil counsel, a fact which Appellant apparently does not dispute.

CONCLUSION

Appellant had a plain, adequate, and speedy remedy for his misdemeanor conviction in the City of Oxford Municipal Court – a statutory appeal *de novo*, at which the presiding circuit court could consider all of his substantive objections. Defendant is not, under any set of circumstances, entitled to a civil writ of mandamus vacating that conviction. His prosecution of a frivolous civil lawsuit and pursuit of this subsequent appeal were unwarranted and vexatious. The City respectfully request this Court to affirm the Circuit Court's Order of Dismissal and Order Granting Sanctions. The City also requests the Court to award additional sanctions for Appellant's pursuit of this frivolous appeal.

THIS, the 26th day of August, 2009.

Respectfully submitted,
CITY OF OXFORD, MISSISSIPPI

PAUL B. WATKINS, JR. (MS BAR NO. [redacted])
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CERTIFICATE OF SERVICE

I, Paul B. Watkins, Jr., one of the attorneys for Appellees do certify that I have this date delivered by United States mail, postage fully prepaid, a true and correct copy of the above and foregoing Brief to:

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Cleveland, Mississippi 38732
CIRCUIT COURT JUDGE

George Dunbar Prewitt, Esq.
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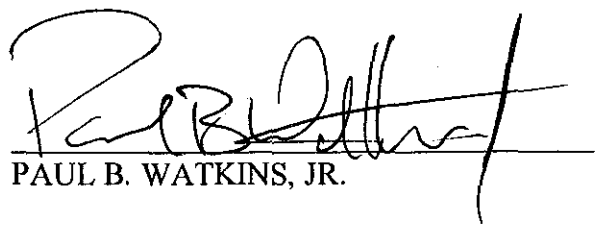
THIS, the 26th day of August, 2009.



PAUL B. WATKINS, JR.