

IN THE SUPREME COURT OF MISSISSIPPI
Cause No. 2009-TS-00756

A-1 PALLET COMPANY

APPELLANT

v.

CITY OF JACKSON, MISSISSIPPI

APPELLEE

BRIEF OF THE CITY OF JACKSON, MISSISSIPPI, APPELLEE
(On Appeal from the Chancery Court of Hinds County, Mississippi, First Judicial District)

ORAL ARGUMENT REQUESTED

Pieter Teeuwissen, City Attorney
Mississippi Bar No. [REDACTED]
Lara E. Gill, Deputy City Attorney II
Mississippi Bar No. [REDACTED]
OFFICE OF THE CITY ATTORNEY
Post Office Box 2779
Jackson, Mississippi 39207-2779
Telephone: 601.960.1799
Facsimile: 601.960.1756

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for the Appellee, the City of Jackson, Mississippi, certifies that the following listed persons have an interest in the outcome of this case, and makes these representations in order that the justices of the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Charlotte Reeves, A-1 Pallet Company (Appellant)
2. Carl Monte Reeves, A-1 Pallet Company (Appellant)
3. A-1 Pallet Company (Appellant)
4. Eduardo Flechas, Esq., attorney for Appellant, A-1 Pallet Company
5. City of Jackson, Mississippi (Appellee)
6. Pieter Teeuwissen, Esq. and Lara E. Gill, Esq., attorneys for Appellee, City of Jackson, Mississippi

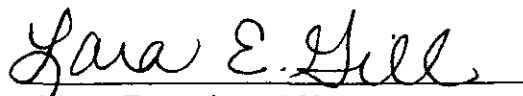

Pieter Teeuwissen, City Attorney
Lara E. Gill, Deputy City Attorney II
Attorneys of Record for Appellee

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STATEMENT OF THE ISSUES

The sole issue raised by this appeal is whether the Chancellor abused his discretion, was manifestly wrong, clearly erroneous or applied an erroneous legal standard.

STATEMENT OF THE CASE

A. Course of Proceedings. The Appellant, A-1 Pallet Company ("A-1"), commenced these proceedings by filing its Petition for Temporary Restraining Order and Permanent Injunction against the Appellee, the City of Jackson, Mississippi ("City"), in the Chancery Court for the First Judicial District of Hinds County, Mississippi ("Chancery Court"), on June 20, 2007. [R. 1-10]. A-1 sought to enjoin the City from demolishing its 1000 North Mill Street location. On that same day, the Chancery Court entered a temporary restraining order against the City prohibiting the City from taking any action against the 1000 North Mill Street location. [R.12]. On June 28, 2007, the Chancery Court extended the temporary restraining order. [R. 17-18]. A-1 then filed a Motion for Permanent Injunction on July 13, 2007. [R. 21-37]. Seven days later, on July 20, 2007 and by agreement of the parties, the Chancery Court entered its Order extending the temporary restraining order a second time. [R. 38-39]. Following the expiration of more than two months, A-1 filed its Motion to Amend Motion for Permanent Injunction¹ on October 2, 2008. [R. 44-53]. The City filed its Response to A-1's Motion to Amend Motion for Permanent Injunction on October 13, 2008. [R. 56-63]. A-1 filed its Amended Motion for Permanent Injunction on November 14, 2008. [R. 66-85]. On November 17, 2008, the City filed its Motion to Dismiss and Dissolve Temporary Injunction. [R.86-95].

A-1 then attempted to serve summonses and its Amended Motion for Permanent Injunction

¹In A-1's Motion to Amend Motion for Permanent Injunction, A-1 sought to add additional claims and additional plaintiffs. Furthermore, A-1 did not seek leave of Court to amend as required by the Mississippi Rules of Civil Procedure. [R. 44-53].

on the City as well as propound discovery. [R.96-100]. The City therefore filed its Motion to Stay Discovery Pending Disposition of Motion to Dismiss and Dissolve Temporary Injunction, on January 12, 2009. [R. 101-103]. The hearing on the City's Motion to Dismiss and Dissolve Temporary Injunction was conducted on April 14, 2009. [R. 151]. The Honorable Dwayne Thomas, Chancellor, entered his Memorandum Opinion and Order ("Final Judgment"), on May 4, 2009, granting the City's Motion to Dismiss and dissolving the temporary injunction. [R. 151-156]. Aggrieved with the Judgment of the Chancery Court, A-1 Pallet instituted this appeal.

B. Statement of Facts. On June 19, 2007, the Jackson City Council ordered that A-1's 1000 North Mill Street location be demolished. A-1 sought temporary injunctive relief in Chancery Court, on June 20, 2009, wherein A-1 requested that it be granted a temporary restraining order as well as a permanent injunction against the City and the former Mayor Frank Melton. [R. 152]. However, A-1 failed to perfect any appeal of the decision of the Jackson City Council with the Circuit Court as required by statute. [pp.7-9, transcript]. The basis of A-1's Petition was that the City was trying to destroy the property located at 1000 North Mill Street owned by A-1, without due process of law. The City asserted that A-1's property constituted a public health issue. A-1 received its temporary injunctive relief, and the City was restrained from taking any action against the subject property until a hearing could be held on the issues.

The Court extended the temporary restraining order two times, on June 20, 2007 and again on June 28, 2007, by agreement of all parties. [R. 38-39]. Following this and on September 11, 2007, the Jackson Historic Preservation Committee determined that the structures at the 1000 North Mill Street location had historic value and should not be demolished. [R.129-133]. The Jackson Historic Preservation Commission decided that A-1's property was not a health issue to the City, and

that it maintained historic value. The Jackson Historic Preservation Commission voted five to zero not to allow the demolition of A-1's property. [R. 152]. The City did not appeal the determination by the Jackson Historic Preservation Committee of A-1's 1000 North Mill Street location. [R. 134-135]. Thereafter, the City took no further action against the property.²

C. The Chancellor's Ruling In his decision of May 4, 2009, the Chancellor correctly concluded that, pursuant to Miss. Code Ann. § 11-51-75, circuit courts have the exclusive jurisdiction to hear all appeals of the Jackson City Council. [R. 153]. Accordingly, the Chancery Court lacked jurisdiction to hear A-1's appeal on the Bill of Exceptions. The Chancery Court further noted in its final judgment that, although A-1 sought a permanent injunction and damages against the City through its Amended Motion for Permanent Injunction and Damages on November 14, 2008, such relief was barred as A-1 failed to seek leave of court to amend its Petition. [R. 154]. Likewise, A-1 failed to properly appeal the City Council's decision as required by statute. [pp.7-9, transcript]. While A-1 argued that the Chancery Court should exercise pendent jurisdiction to hear its damage claims against the City, the Chancellor correctly concluded that there was no such basis for the Court to exercise its equity jurisdiction, and that jurisdiction for such a suit must be brought in a court which has original or concurrent jurisdiction over the cause of action which the claim is based pursuant to Miss. Code Ann. § 11-46-13. Finally, the Chancellor found that the temporary restraining orders issued by the Court had served their purpose and that there was no need to continue the injunction, temporarily or permanently, against the City.

²In addition to seeking relief in Chancery Court, A-1 also filed a Complaint and an Amended Complaint against the City in the United States Federal Court for the Southern District of Mississippi, Cause No. 3:08-CV-00433, on June 14, 2008. The City responded by filing its Motion to Dismiss, which was ultimately granted by U.S. District Court Judge Henry T. Wingate on December 17, 2008.

SUMMARY OF THE ARGUMENT

The Chancellor's decision in this matter should stand. The Chancellor did not abuse his discretion, commit manifest error or apply an erroneous legal standard. Controlling Mississippi statutory and case authority provides that the circuit court maintains exclusive jurisdiction for appeals of the decision of the Jackson City Council. Furthermore, because A-1 failed to seek leave of court as required by the Mississippi Rules of Civil Procedure to amend its original Petition, the Chancery Court could not consider A-1's damage claims. However, even if A-1 had properly sought leave of court to amend its Petition, the Chancery Court lacked jurisdiction to hear A-1's purported tort claims. Finally, there was no evidence presented by A-1 to show that a basis for continued injunctive relief against the City. A-1 failed to offer any proof at the hearing to support the continuation of the restraining order. As a result, it was proper for the injunction to be dissolved.

Accordingly, the Chancellor's decision is supported by the evidence in this case, as well as controlling Mississippi statutory and case authority.

STANDARD OF REVIEW

Questions of law are reviewed *de novo* by the Court. *Maldonado v. Kelly*, 768 So. 2d 906, 908 (Miss. 2000). The Mississippi Appeals Courts employ a limited standard of review on appeals from chancery court. *Central Healthcare Services, P.A. v. Citizens Bank of Philadelphia*, 12 So. 3d 1159, 1165 (Miss. App. 2009). Mississippi Appeals Courts "shall not disturb the findings of a chancellor unless the chancellor was manifestly wrong, clearly erroneous, or there was an application by the chancellor of an erroneous legal standard." *Kennedy v. Anderson*, 881 So. 2d 340,345 (Miss. Ct. App. 2004); see also *Vaughn v. Vaughn*, 798 So. 2d 431, 433-34 (Miss. 2001). These Courts will therefore only set aside a chancellor's fact findings which are manifestly wrong or are not

supported by substantial, credible evidence. *Bredemeier v. Jackson*, 689 So. 2d 770, 775 (Miss. 1997).

ARGUMENT AND AUTHORITIES

I. Circuit Court has exclusive jurisdiction for appeal of decision by City.

The Mississippi legislature has codified the procedure to appeal decisions of municipalities, including that of the Jackson City Council that is at issue in this case. Pursuant to Miss. Code Ann. § 11-51-75, the exclusive remedy to appeal a decision of a municipal authority is to file a bill of exceptions in Circuit Court within ten (10) days of the rendering of the decision by the municipality. Miss. Code Ann. § 11-51-75 states in relevant part that:

Any person aggrieved by a judgment or decision of the board of supervisors, or municipal authorities of a city, town, or village, may appeal within ten (10) days from the date of adjournment at which session the board of supervisors or municipal authorities rendered such judgment or decision, and may embody the facts, judgment and decision in a bill of exceptions which shall be signed by the person acting as president of the board of supervisors or of the municipal authorities. The clerk thereof shall transmit the bill of exceptions to the circuit court at once, and the court shall either in term time or in vacation hear and determine the same on the case as presented by the bill of exceptions as an appellate court, and shall affirm or reverse the judgment.

In fact, the Mississippi Supreme Court had stated that, where a plaintiff's action is in form and substance and for all purposes, an appeal from a decision of a municipality, **exclusive jurisdiction is in the circuit court**. *Falco Lime, Inc., et al. v. City of Vicksburg, et al.*, 836 So. 2d 711, 716 (Miss. 2003)(emphasis supplied). Alternatively stated, any act of a municipality leaving a party aggrieved, as is the case here, is appealable to the circuit court. *See South Central Turf, Inc. v. City of Jackson*, 526 So. 2d 558, 562 (Miss. 1988). In the instant matter, the Appellant, A-1 seeks to do an end run around this statutory requirement and have the matter determined in Chancery

Court. However, as demonstrated in controlling case authority herein, the Chancellor was correct in holding that A-1's request for relief regarding the City's decision was outside the scope of authority and jurisdiction of the Chancery Court.

In the case of *Hood v. Perry County, Mississippi*, 821 So. 2d 900 (Miss. App. 2002), plaintiffs sought a declaration in chancery court that Perry County had abandoned a road based on the public roads register prepared by the Board of Supervisors. *Id.* at 901-902. At trial, the Chancellor dismissed the action, as is the case here, stating that he had no jurisdiction to hear the matter as the exclusive remedy was found in circuit court. The Chancellor temporarily granted an injunction to provide the plaintiffs with time to properly appeal the action to the circuit court, however, the plaintiffs failed to do so. *Id.*

The Mississippi Court of Appeals affirmed dismissal of the action, stating that the plaintiffs "ignored their exclusive remedy [of Miss. Code Ann. § 11-51-75], in an attempt to make an end-run around the judicial process of the State of Mississippi." *Id.* at 902. The Court of Appeals noted that the statutory scheme for appeals of decisions by a municipality afforded a plain, adequate, speedy and complete relief for a judicial determination of a right. *Id.* The Appeals Court further noted that the plaintiffs' actions of proceeding in chancery court amounted to "a failure to state a claim upon which relief can be granted because the circuit court had exclusive jurisdiction over any appeal. . . ." *Id.* As a result, the Chancery Court's dismissal of the claims was upheld by the Mississippi Court of Appeals. The same action is warranted in the case at bar.

Another almost identical case to the instant matter is *South Central Turf, Inc. v. City of Jackson*, 526 So. 2d 558 (Miss. 1988). In that case, the plaintiff was aggrieved by the Jackson City Council's order regarding the lease of golf carts. The plaintiff therefore sought a temporary

restraining order against the City to prohibit the City from leasing the golf carts with a particular company. *Id.* at 560. The Chancery Court ultimately dismissed the action, finding that it lacked subject matter jurisdiction. *South Central Turf, Inc. v. City of Jackson*, 526 So. 2d at 560 (Miss. 1988). The Mississippi Supreme Court affirmed the Chancellor's dismissal of the action for lack of jurisdiction.

As illustrated in both *Hood v. Perry County, Mississippi* and *South Central Turf, Inc. v. City of Jackson*, parties who are aggrieved with decisions of a municipality must follow the statutory scheme of filing a bill of exceptions in circuit court. Chancery courts are simply without authority or jurisdiction to consider these matters and such matters are vested in the power of circuit courts. The Chancellor, in the case at bar, was therefore correct in dismissing A-1's claims, and his decision should be affirmed.

II. A-1's damages claims fail in chancery court.

In the instant matter, A-1's attempt to bring tort claims against the City in chancery court must fail. A-1's tort claims fail for two main reasons. First, A-1 is procedurally barred as it failed to request leave of court to amend its Petition to add the purported claims of negligence³, slander/libel, etc., for which A-1 seeks recovery from the City. Second, even if A-1 had properly amended its Petition to request relief for the purported torts, the Chancery Court still lacked jurisdiction to hear such claims. *See also* Miss. Code Ann. § 11-46-13. As a result, the Chancellor's decision is correct and A-1's appeal should be denied.

³In fact, counsel for A-1 admitted at a hearing that "...the City is correct that a negligence action is not permitted under the Tort Claims Act. So we would concede that that is probably not proper here before the Court." [p. 14, lines 12-15, transcript].

A. A-1 failed to secure leave of court to amend pleading.

As set forth in the Course of Proceedings herein, A-1 filed a Petition for Temporary Restraining Order on June 20, 2007. [R. 1-10]. This Petition sought to enjoin the City from proceeding with the demolition of the property located at 1000 North Mill Street. On July 7, 2007, A-1 filed a separate Motion for Permanent Injunction. [R. 21-37]. This Motion was followed by a Motion to Amend Motion for Permanent Injunction filed on October 2, 2008, where A-1 purportedly sought to add more parties and to bring new tort claims. [R. 44-53]. Since the City filed a response to A-1's Motion to Amend Motion for Permanent Injunction [R. 56-63], A-1 was required, pursuant to Rule 15 of the Mississippi Rules of Civil Procedure, to seek leave of court to amend its pleadings. However, A-1 failed to seek leave of court as required, and filed and served its Amended Motion for Permanent Injunction on November 14, 2008.⁴ [R. 66-85]; [pp.12-14, transcript].

It is well established that A-1's failure results in a waiver. "It is the responsibility of the movant to obtain a ruling from the court on motions filed by him, and failure to do so constitutes a waiver of [the same]." *Griffith v. Griffith*, 997 So. 2d 218, 225 (Miss. App. 2008), quoting *Anderson v. McRae's Inc.*, 931 So. 2d 674, 678 (Miss. Ct. App. 2006) and *Billiot v. State*, 454 So. 2d 445, 456 (Miss. 1984). As a result, A-1 wholly failed to amend⁵ its Petition for Permanent Injunction as required by the Mississippi Rules of Civil Procedure, and no new claims, including tort claims against the City, were added.

Further, it is well established that if proposed amendments are futile, as is the case here and

⁴Of course, A-1 filed its Amended Motion for Permanent Injunction in the Chancery Court, while its Complaint against the City in the United States Federal Court for the Southern District of Mississippi was pending.

⁵In the trial court proceedings, A-1 waited over one year to add the purported tort claims against the City, as well as two new plaintiffs.

admitted by A-1's counsel, the motion may be denied. *See Forman v. Davis*, 371 U.S. 178 (1962) and *Red Enterprises, Inc. v. Peashooter*, 455 So.2d 793 (Miss. 1984). Under the Mississippi Tort Claims Act ("MTCA"), the statute of limitations to bring an action against the City is one year. Miss. Code Ann. § 11-46-11. The statute for defamation against an employee acting outside the course and scope of employment, which is not governed by the MTCA, is also one year. Miss. Code Ann. § 15-1-35. Accordingly, some, if not all, of A-1's claims to be raised in the amended pleading are futile as they are barred by the MTCA and other applicable statutes of limitations. Because of A-1's failures and based on controlling Mississippi case precedence, the Chancellor correctly concluded that he could not consider such issues and ultimately dismissed the claims.

B. Chancery Court lacked jurisdiction to hear A-1's tort claims.

Notwithstanding the fact that A-1 failed to amend its pleading to add tort claims, A-1's tort claims would fail regardless. The Chancery Court does not and did not have jurisdiction to hear the tort claims. [p. 9, transcript]. It is fundamental that circuit courts, not chancery courts, are the primary adjudicators of tort claims. *See* Miss. Constitution, Art. 6, 156,159 (a) - (e) and *City of Ridgeland v. Fowler*, 846 So. 2d 210, 212 (Miss. 2003). In fact, the Mississippi Supreme Court has previously stated that a chancery court does "not have subject matter jurisdiction over MTCA action[s]." *Municipality Liability Plan v. Jordan*, 863 So. 2d 934, 940 (Miss. 2003).

Similarly, the Chancery Court could not exercise pendent jurisdiction because there is no independent basis for equity to exist to bring the matter within the subject matter jurisdiction of the chancery court. *See* Miss. Code Ann. § 9-5-81. As set forth above, pursuant to Miss. Code Ann. § 11-51-75, jurisdiction for matters where a party is appealing a municipal body's decision rests solely with the Circuit Court, and therefore no independent equity basis exists. The Mississippi Supreme

Court has reiterated this proposition in *Falco Lime, Inc. v. City of Vicksburg*, 836 So. 2d 711, 716 (Miss. 2003). In that case, the Court stated:

This Court has held that “judgment or decision” embraces “any act of a county or municipality leaving a party aggrieved. . .[where] all issues of controversy are finally disposed of by order of the City Council.” *South Central Turf, Inc. v. City of Jackson*, 526 So. 2d 558,561 (Miss. 1988). Where a plaintiff’s action is “in form and substance, and for all purposes, an appeal from a decision” of a municipality, “**exclusive jurisdiction [is] the circuit court pursuant to §11-51-75.**”

(Emphasis supplied). In the instant matter, little argument can be made that A-1's actions follow and are germane to a decision by the Jackson City Council. Thus, A-1's failure to present their grievances in Circuit Court within the ten (10) day time period prescribed by the statute unequivocally requires dismissal of the action. The Chancellor was therefore correct in dismissing A-1's claims.

III. Chancellor’s dissolution of temporary restraining orders was proper.

A-1's failure to offer any further proof at the hearing was sufficient cause for the Chancellor to dissolve the temporary injunction. “When a motion to dissolve an injunction is on bill and answer, and the answer denies all the equities of the bill, the general rule is that the defendant is entitled to have the injunction dissolved, unless the bill is proved.” *Jennings v. Smith County Board of Supervisors*, 183 So. 2d 645 (Miss. 1966), *relying on* Griffith, Mississippi Chancery Practice § 453 (2d ed. 1950). The facts before this Court lead directly to this conclusion.

First, A-1 improperly challenged a decision of the Jackson City Council in the Chancery Court (as well as the U.S. Federal Court for the Southern District of Mississippi), by seeking a restraining order to prevent enforcement of a city council order, contrary to clear Mississippi statutory authority. Following the extension of the temporary restraining order on June 28, 2007,

the Jackson Historic Preservation Commission, on September 11, 2007, determined that A-1's 1000 North Mill Street property "did not show sufficient reasons to [be] demolish[ed]," and that the structures had historic value. [R. 129-133]. This action by the Jackson Historic Preservation Commission overruled the City's earlier order to demolish, and the City never appealed this decision. Further, on April 24, 2009, the Special Assistant City Attorney for the City of Jackson, stated, under oath, that there was no action pending regarding A-1's property located at 1000 North Mill Street. [R. 134-135].

At the hearing, A-1 offered no proof or evidence, other than unsupported, conclusory allegations [pp. 10-13, transcript], that any threat existed to the property. On the other hand, the City presented to the trial court a chronology of authenticated documents detailing the course of events giving rise to temporary restraining order and the requisite need for dissolution, and proved the central issue of its case - that there was no further need for the temporary restraining order. As a result, the Chancellor correctly concluded that the temporary restraining order had served its purpose, and appropriately dismissed A-1's action, dissolved the temporary restraining order and denied A-1's amendments to the pleadings. Whatever alleged threat to A-1's property may have existed, said threat had long since been abated. The Chancery Court, though arguable an improper forum, served its purpose. Hence, the Chancellor's decision that no additional proceedings were proper was neither manifestly wrong, clearly erroneous nor the result of applying an erroneous legal standard.

CONCLUSION

The record and controlling Mississippi case and statutory authorities clearly show that A-1 sought relief in the wrong court. The record and controlling Mississippi case authority also show

that A-1 failed to properly amend its motion to add tort claims against the City, and that such tort claims against the City were futile and time-barred. The record and authority presented for consideration by the City evidences that the Chancellor properly dissolved the subject temporary restraining orders against the City and dismissed A-1's claims. Therefore, the Chancellor did not abuse his discretion in granting the City's Motion to Dismiss and to Dissolve Temporary Injunction. The Chancellor's decision and fact finding are further supported by substantial, credible evidence. As a result, there is no basis for A-1's appeal, and the Court should deny A-1's request for relief.

RESPECTFULLY SUBMITTED, this the 8th day of January, 2010.

CITY OF JACKSON, MISSISSIPPI

By its attorneys
OFFICE OF THE CITY ATTORNEY

By: Lara E. Gill
Pieter Teeuwissen, City Attorney
Lara E. Gill, Deputy City Attorney II

Pieter Teeuwissen
Mississippi Bar No. [REDACTED]
Lara E. Gill
Mississippi Bar No. [REDACTED]
OFFICE OF THE CITY ATTORNEY
Post Office Box 2779
Jackson, Mississippi 39207-2779
Telephone 601.960.1799
Telefax 601.960.1756

CERTIFICATE OF SERVICE

I, Lara E. Gill, one of the attorneys for the Appellee, the City of Jackson, Mississippi, do hereby certify that I have this date delivered, via hand delivery, the original and three (3) copies of the Brief of the Appellee, the original and three (3) copies of the Record Excerpts of the Appellee to the following:

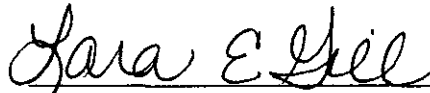
Kathy Gillis, Supreme Court Clerk
450 High Street
Jackson, Mississippi 39201

and one copy of the Appellee's Brief and Record Excerpts was delivered via hand delivery and/or United States mail, postage prepaid, to the following:

Honorable Dwayne Thomas
Hinds County Chancellor
Post Office Box 686
Jackson, Mississippi 39205-0686

Eduardo E. Flechas, Esq.
FLECHAS & ASSOCIATES, P.A.
318 South State Street
Jackson, Mississippi 39201
Attorney for Appellant, A-1 Pallet

DATED this the 8th day of January, 2010.



Lara E. Gill