

**BEFORE THE COURT OF APPEALS OF THE
STATE OF MISSISSIPPI**

WILLIAM SMITH

APPELLANT

VERSUS

CIVIL ACTION NO. 2009-CA-1003

CITY OF SALTILLO, MISSISSIPPI

APPELLEE

BRIEF OF APPELLANT

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CERTIFICATE OF INTERESTED PERSONS

The undersigned Counsel of Record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. **William Smith, Appellant**
2. **City of Saltillo, Mississippi, Appellee**

DATED, this 29 day of Dec, 2009.



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STATEMENT OF THE CASE

The Appellant, William Smith, filed a Complaint in the County Court of Lee County, Mississippi, alleging that the City Court Clerk intentionally sent in his conviction of DUI three (3) years late and modified the dates which did not correctly reflect the date of conviction. As a result, Appellant, William Smith, alleges that he, as a truck driver, lost wages and income due to the fact that he was told by the City Judge that his driver's license was suspended at the time he pled guilty, and he therefore quit driving for a period of at least ninety (90) days, and then three (3) years later, his license was suspended again as a result of the Clerk's actions in sending in, three (3) years later, the suspension notice and the Notice of Conviction.

Damages claimed are his lost wages and inability to work due to not having a driver's license, since William Smith is a truck driver.

ISSUES BEFORE THE COURT

ISSUE I: UNDER THE ABOVE STATED FACT, THE CITY CLERK INTENTIONALLY FAILED TO SEND IN THE NOTICE OF CONVICTION IN A TIMELY FASHION, i.e., THREE (3) YEARS LATE, AND INDICATED WHEN SHE SENT IT IN THE WRONG DATES, CAUSING THE DRIVER'S LICENSE OF WILLIAM SMITH TO BE SUSPENDED TWICE, IS SUCH CLAIM BARRED UNDER THE MISSISSIPPI TORT CLAIMS ACT BY SOVEREIGN IMMUNITY AS HELD BY CHARLES BRETT, MUNICIPAL COURT JUDGE? IN THIS PARTICULAR CASE BEFORE THE COURT, A COMPLAINT WAS TIMELY FILED SEEKING DAMAGES AGAINST THE CITY OF SALTILLO, MISSISSIPPI, WHERE THE DEFENDANT WAS CONVICTED OF DUI IN THE MUNICIPAL COURT IN 2009 AND THAT THE DUI CASE WAS NEGLIGENTLY HANDLED BY THE CLERK, AND THE DISCOVERY AND DOCUMENTATION REFLECT THAT THE DUI WAS SEND IN THREE (3) YEARS LATE. THE CONVICTION IS CLEARLY DATED DECEMBER OF 2006. THIS COMPLAINT CLEARLY ALLEGED THAT THE DOCUMENTS HAD BEEN DOCTORED OR ALTERED TO REFLECT A CHANGE IN THE DATE OF THE CONVICTION. THE RECORDS IN THE FILE INDICATE A COMPLAINT WHERE THE MUNICIPAL CLERK MISHANDLED THE SENDING IN OF A DUI ABSTRACT, WHICH RESULTED IN THE LOSS OF THE APPELLANT'S DRIVING PRIVILEGES AFTER THE APPELLANT HAD ALREADY BEEN TOLD HIS DRIVER'S LICENSE HAD BEEN SUSPENDED, AND HE SERVED THEREFORE TWO (2) NINETY (90) DAY SUSPENSIONS. THE PRINCIPAL ISSUE BEFORE THE COURT IS WHETHER OR NOT THE NEGLIGENCE OF THE CLERK IN SO HANDLING THIS MINISTERIAL ACT CONSTITUTES GROUNDS FOR LIABILITY AGAINST THE CITY OF SALTILLO OUTSIDE THE PROTECTION OF THE *SOVEREIGN IMMUNITY DOCTRINE*.

ISSUE II: WHETHER OR NOT THE CIRCUIT COURT HEARING

THIS CASE ON APPEAL IMPROPERLY DISMISSED THE
APPEAL AFTER IT WAS PROPERLY PAID FOR AND
FILED IN THE CIRCUIT COURT OF WHICH THE
COUNTY COURT IS A DIVISION.

SUMMARY OF THE ARGUMENT

THE APPELLANT, William Smith, would respectfully state that a Municipal Court Clerk acting in a ministerial function of sending an abstract to Jackson, Mississippi is not immune from suit as a result of her actions as reflected in this case. The question of immunity can only be fully developed as the case is tried but the simple actions of this ministerial act which is not a part of her Court functions and could be followed and performed by any other employee of the City are not protected by the scope of the immunity and therefore the City of Saltillo has liability if the facts alleged by William Smith are true. It was error to dismiss the suit by Judge Brett on the grounds of Sovereign Immunity. The Circuit Court also erred in dismissing this Appeal when two separate Circuit Judges had signed orders setting up scheduling orders and then granting an extension of time to file briefs when it was obvious that a clear effort was made to file an Appeal in the right Court being the Circuit Court when there was alleged an error to be in the County Court which is a specific division of the Circuit Court just as the Court of Appeals is a division of the Supreme Court and this error is compounded by the fact that as required under Supreme Court Rules, after the appeal is properly filed with the Circuit Clerk, no notice of any deficiency was ever given to the Appellant ever in this case and the Appellant was not allowed to correct any deficiency by the payment of the required court cost or extra cost or the more specific

designation of his record.

Wherefore premises considered for these reasons, the Appellant asks that this case be remanded back to the County Court for the trial on the merits.

STATEMENT OF THE CASE

The Appellant, William Smith, filed a Complaint in the County Court of Lee County, Mississippi, alleging that the City Court Clerk intentionally sent in his conviction of DUI three (3) years late and modified the dates which did not correctly reflect the date of conviction. As a result, Appellant, William Smith, alleges that he, as a truck driver, lost wages and income due to the fact that he was told by the City Judge that his driver's license was suspended at the time he pled guilty, and he therefore quit driving for a period of at least ninety (90) days, and then three (3) years later, his license was suspended again as a result of the Clerk's actions in sending in, three (3) years later, the suspension notice and the Notice of Conviction.

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I, the undersigned, GENE BARTON, Attorney for the Appellant, William Smith, have this date filed a true, correct and exact copy of the above and foregoing Appellant's Summary of the Argument, and on said date served a true, correct and exact copy of said document upon the hereinafter named persons, via Unites States Mail, First Class, postage prepaid, the same being their last known and now existing post office addresses, respectively:

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Honorable James L. Roberts, Jr.
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SO CERTIFIED, this the 29 day of Dec, 2009



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ARGUMENT: ISSUE I

The Supreme Court of the State of Mississippi has held in numerous cases that reckless disregard of the facts and intentional wrongdoing is an exception to the *Sovereign Immunity Statute*, which allows suits against municipalities. The Court so held in *The City of Jackson and Miranda Morton v. Lynda Key Presley*, 2008-CA-381, COA, which dealt with a tragic car accident where the Court held that the evidence in itself indicated that the facts justified a finding of reckless disregard. More specifically, in that case, in paragraph sixteen (16), the Court held that the Mississippi Tort Claims Act provides exclusive civil remedy against a governmental entity or its employees for torts. Mississippi Code of 1972, Annotated, Section 11-46-71 (revised 2002) states no governmental employee shall be personally liable for acts or omissions occurring within the course of the employee's duties. Mississippi Code of 1972, Annotated, Section 11-46-72 (revised 2002). There is an exception where the employee acted in reckless disregard for the safety and well-being of a person, or where the actions were intentional.

The critical issue before the Court of Appeals and ultimately, the Supreme Court is whether or not under the Mississippi Tort Claims Act, assuming all notice requirements and other provisions are followed, is a Court Clerk of a municipality entitled to absolute and complete sovereign immunity, regardless of his or her actions? This matter has not been clearly addressed by the Courts. The Appellant in this case realizes that there are two issues before the Court, one being whether

or not the appeal is properly filed, which Appellant contends it was, the secondly, the issue of sovereign immunity. Since the issue of sovereign immunity is a matter of major significance, and this case, and case law on this issue is not clear, Appellant hopes that this Court will address this issue regardless of its finding on the second issue. In that this matter needs to be addressed by the Supreme Court of Mississippi with respect to its interpretation of Mississippi Code of 1972, Annotated, Section 11-46-9.

Specifically, the code section involved under Mississippi Code of 1972, Annotated, Section 11-46-9, is subsection 1C which provides as follows:

“Arising out of an act or omission of an employee of a governmental entity engaged in the performance or execution of duties relating to police or for fire protection, unless the employee acted in reckless disregard for the safety and well-being of any person not engaged in criminal activity at the time of the injury.”

Not fire
Police
Protection
Case?

The Appellant in this case contends that the actions of the Clerk of the Court to not fall within this exception. Other cases have been decided, for example, where a Chancery Clerk has liability for failure to properly file a Lis Pendens Notice or other document which has caused damages to other individuals by failure to comply with his duties. The Court has held and extended this claim of immunity to an Assistant District Attorney who was acting in the scope of her employee as an Assistant District Attorney provided incorrect information as far as identification regarding a person who committed the crime of false pretenses. See *Stewart v. District Attorney*, 923 So. 2d 1017 (COA 2005). However, this case

Clerk?

deals with the Clerk of the Court. The issue is, and there is very little case law that deals with it as to whether or not because the Clerk is an officer of the Court, does that preclude liability against the Clerk for performing or failing to perform what could normally consider ministerial functions, such as mailing in abstracts of convictions? These situations could occur where the Clerk negligently sent in a form that an individual had not paid their fine and therefore their driver's license was suspended, when in fact they had paid their fine, and it occur by negligence. On the other hand, a Clerk could intentionally send in information that an individual had failed to pay their fine when in fact they had paid their fine and as a result, the person's driver's license is suspended. The same applies with respect to the DUI. A Clerk could send in the form and put the wrong information on the form and the wrong person's license could be suspended, when in fact they had never been convicted of DUI. The action could be intentional or it could be by pure neglect. Appellant contends that the actions of the Clerk were acting in a ministerial function of submitting this documentation to the state as part of her duties as Clerk, do not grant her sovereign immunity. This is the primary issue before the Court. Is a municipal clerk protected by sovereign immunity if she negligently sends in the wrong documents to the state to suspend the license, or fails to send it in for three (3) years, or on purpose sends in incorrect information which results in the suspension of someone's driver's license, or in the other possibility, if the Clerk fails to send in the information and the person's driver's

license is not suspended, and the individual continues to drive with a license and injuries someone?

All of these scenarios are possibilities that occur and the Appellant asks for a ruling as to whether or not the Clerk has absolute sovereign immunity for ministerial functions. Another possible scenario is that the Clerk of the Court is now authorized to accept and issue, prepare paperwork in domestic violence cases. And how about the situation where the Clerk refuses to fill them out and the person is thereby killed or injured? All of these are possible scenarios. Does the Clerk have absolute sovereign immunity for these ministerial functions? The Appellant would respectfully state that this issue needs to be address.

The case of *Wendell Duncan v. Donna Jill Johnson and Renee Covert* (2008-CP-00055 COA), dealing with the liability of a Circuit Clerk, has some bearing on the issues before the Court. It sheds some light on the questions that the Appellant raises in this Brief. Although an Opinion was written, Wendell Duncan filed his case *Pro Se*, and did not fully brief the case. In this particular case, a Circuit Clerk was sued for failure to issue process and apparently, the Circuit Court dismissed the case *sua sante*. The Courts have held that a clerk is entitled only to qualified immunity for good faith efforts in the execution of his or her duties, unless his or her conduct violates clearly established statutory and constitutional rights which a reasonable person would have known. *Richardson v. McDonnell*, 841 F. 2d 120, 122 (5th Cir. 1988), *Harlow v. Fitzgerald*, 457 U.S. 800.

Also see *Antonio v. Byers and Anderson, Inc.*, 508 U.S. 429.

Another interesting case that deals with a similar type issue is *Tippah County, Mississippi v. Joyce Childers as Guardian of Daniel Childers and Daniel Childers, Individually*, which dealt with a lawsuit against a Chancery Clerk as a result of the filing of a mental commitment evaluation and a Writ for mental evaluation and treatment by the Chancery Clerk of Tippah County, Mississippi, when the Chancery Clerk issued the Writ. In this particular case, Childers had sent Tippah County a proper Notice of Claim pursuant to the Mississippi Tort Claims Act. The case came directly under the provisions of the Mississippi Tort Claims Act, and in fact, Tippah County failed to respond to the Complaint and the Circuit Court entered a Default Judgment after conducting a Writ of Inquiry on August 16, 2007, and rendered a Judgment for a substantial amount of money against the Chancery Court Clerk. The suit dealt with a number of issues, including the right to set aside the Default Judgment and also the issues of the liability of a Clerk. Based on this case, it is clearly evident that a Chancery Clerk or Circuit Clerk or any Court Clerk performing a ministerial duty can be held liable and ruling under a 12(b) Motion, that such claim in itself does not state a cause of action, is error by the County Court Judge.

Another interesting case, which is another *Pro Se* case, was filed *Patty Young v. William (Bill) Benson, Chancery Clerk of Lee County, Mississippi*, alleging an improper delay in paying her Four Hundred Fifteen Dollars (\$415.00) that she had

paid as a result of other litigation. The Clerk, Benson, claimed that he had qualified judicial immunity as a Clerk of the Court. This case was dismissed solely on the issue of the statute of limitations under the Mississippi Tort Claims Act, and other details concerning the liability of the Clerk were not gone into in this particular case.

A number of cases seem to have arisen dealing with Patty Young and Harry Vinson. The fact that these cases were in fact dismissed on various grounds which may or may not have been related to the fact that these parties filed so many lawsuits is irrelevant to the interesting discussion of the law in these cases. Mr. Vinson and Ms. Young were *Pro Se* parties, but despite that fact, quite interesting points of law are brought up in these opinions by the Court, which should be informative on the issue presently before the Court, this case being in the *Vinson* case, particularly cited as 2000-CP-01524-COA, does elaborate on the liability of a Chancery Clerk and court clerks in general. The general rule is that court clerks are limited in liability when they are performing and that they have *quasi-judicial immunity* when performing official duties. However, ministerial duties are handled separately. The Mississippi Supreme Court held, in *Ellsworth v. Busby*, 172 Miss. 399, 160 So. 575 (1935), a 1975 case, that the Chancery Clerk's failure to sign a Certificate of Probation after the Clerk's Deputy had approved or registered the claim, the Court held that the Clerk was personally liable because the signing of his name was merely a ministerial act. It would certainly appear

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that the sending in of a form to the State of Mississippi is a ministerial act. It is simply taking the form and in a timely fashion, sending the correct form in to the State of Mississippi.

ARGUMENT: ISSUE II

The record reflects on page 5 of the Record Excerpts that a Petition for Appeal was filed timely within the thirty (30) days, on November 10, 2008, with the Circuit Court. The Petition was filed with the Circuit Court of Lee County, Mississippi, as reflected in the Petition it is an appeal of a Decision signed by Judge Charles Brett on or about October 31, 2008 (RE 4). The appeal was based on the fact that the County Court, a division of the Circuit Court, improperly dismissed the appeal on the doctrine of *Sovereign Immunity*.

The Appellee, City of Saltillo, filed a Motion to dismiss the appeal for failing to file a Notice of the appeal with the County Court Clerk, and allegations were made that Terry D. Little, attorney for the City of Saltillo, did not also receive notice (RE 4). It is to be noted, as reflected in the Record Excerpts, that the Certificate of Mailing indicates that a copy was mailed to Terry D. Little (RE 5,15). Counsel only assumed that his secretary received such notice. An Order was entered on November 10, 2008, setting up a Briefing Schedule signed by Senior Circuit Judge Thomas J. Gardner, III, with copies mailed to Gene Barton and Terry D. Little (RE 7). It should be noted that there was no mention or letter or complaint filed that anything was improper with the appeal or that any of the costs had not

been paid. It can only be assumed that since this is an Order signed by the Circuit Court dealing with an appeal from the County Court, and the County Court is a division of the Circuit Court, that the County Court was aware of this. On April 2, 2009, an Order giving additional time to file Brief was filed, signed by Judge James L. Roberts, Jr.(RE 8). Subsequently, Briefs were filed. On or about 17th day of April, a Motion to Vacate Order and Dismiss Appeal was filed (RE 3). Allegations were made that the appeal was improperly filed, alleging that the specific rules of Circuit Court regarding a filing on a Notice, specifically in the County Court, and the prepayment of all Court costs and the Designation of the Record, had not been properly filed. Various technical rules that come under the Rules of Circuit Court were alleged. A response was filed to this Motion to Vacate Order states and alleges as a response that pursuant to the Rules, the appeal was filed in Circuit Court, and two (2) Circuit Judges filed separate Motions with respect to the Briefing Deadlines (RE 15). These Orders reflect they were mailed out to both attorneys (RE 15). Furthermore, the documentation reflects and is submitted in the file that during the year 2008, Counsel had numerous health and other problems including a race to the Supreme Court, that lingered on into the year 2009. Such health problems have now resolved themselves and are pretty much under control, with the exception of certain problems of his son. Counsel is now divorced. An Affidavit was submitted, and is in the record, reflecting most particularly some of the serious health problems that Counsel was suffering, along

with a letter from his doctor dated July 10, 2008, and further documentation from the doctor of November 12, 2007, concerning a knee injury (RE 11-14). All of these facts are mitigating with respect to any deficiencies in the filing of the appeal, which should constitute excusable reasons for total compliance of these rules in question.

Two things are undisputed. ~~The Circuit Court that hears appeals from the County Court. The County Court is a division of the Circuit Court, and has its Clerk's office in the same building as the Circuit Court Clerk's office, and all Clerks in the County Court Division work under the supervision of the elected Circuit Clerk and are appointed by the elected Circuit Clerk.~~ It is undisputed that this appeal was filed in the Circuit Court with the payment of proper costs, and it is undisputed that the Senior Circuit Court Judge set up a Briefing Schedule, and that the other Circuit Court Judge, who later dismissed the appeal, himself gave an extension of time for the filing of briefs. It is clear that the Circuit Court has jurisdiction. The appeal has been dismissed based on certain procedural issues and deficiencies regarding the proper Designation of the Record and the proper payment of the Court costs for the preparing of the Record, and other technicalities (RE-22). In researching this issue as to whether or not the Circuit Judge erred in dismissing the appeal, no specific case has been found where an appeal from County Court to Circuit Court has been dismissed for failure to follow some of the technical rules or in the specific Rules of the Circuit Court. However, again, it is

clear that the appeal was properly filed with the Circuit Court and, although the County Court is a different Court, it is a division of the Circuit Court. All parties were on notice of the appeal as is reflected by the Certificate of Service of the Petition on the City of Saltillo's attorney and also by the two (2) separate Orders scheduling Briefing Deadlines signed by two (2) separate Circuit Court Judges, including the senior Circuit Judge.

The Supreme Court of this state has on numerous occasions granted relief to reinstate appeals and allow appeals so that the ends of justice may be met. Numerous cases can be found through extensive research to support the position that the Court favors the proper rendition of justice and the hearing of an appeal if an effort is made to file an appeal. A quick review of some of the recent cases include *Cynthia Amacker v. Patrick Amacker*, 2008-CP-00332-COA. The case basically involved an appeal of a divorce case. What is significant, though, is that initially, Cynthia Amacker proceeded *Pro Se* with her appeal, and the appeal was subsequently dismissed by the Supreme Court for failure to follow the Mississippi Rules of Appellate Procedure. Cynthia has failed to file a timely Brief. After dismissal, Cynthia petitioned to have her appeal reinstated, for time to retain counsel and for time to file a Supplemental Brief. The Supreme Court granted Cynthia's request. There was little discussion in the particular case, *Amacker v. Amacker*, as to the basis for the logic, but it is clear precedent that the Courts favor allowing the prosecution of appeals which have been filed in spite of procedural

errors or missing of deadlines, if the basic appeal is filed.

Another interesting case which is particularly important according to the Appellant in this case, is the *Brown v. Robinson Property Group* case, found at 2009 Miss - 0729.334. This is an appeal of a worker's compensation arising out of the Circuit Court of Tunica County, Mississippi. In this particular case, the question of whether or not the appeal should have been dismissed as a result of Brown's failure to properly pursue the appeal. A Motion in the case, being the *Brown* case was filed, of some type to dismiss the appeal for failure to follow various procedures.

It is significant that when an appeal is filed with the Supreme Court and there is any type of deficiency, that the Supreme Court notifies Counsel and gives fourteen (14) days' notice of deficiencies. In the case presently before the Court involving William Smith, there was no notice whatsoever ever given to Appellant of any deficiency in his appeal, although the appeal was clearly filed with the proper Court. If there had ever been any notice given that the proper Court costs, proper Bond, and property Designation of Record had not been filed, then all of these problems would have been immediately resolved. The appeal stayed on the Docket and the Senior Circuit Judge, without the Clerk giving any notice of any deficiencies, signed an Order granting and scheduling the Briefing Deadlines. This was done by Senior Circuit Judge Thomas J. Gardner, III (RE 7). Subsequently, a Motion was filed by the Appellant for additional time to file his Brief and an

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additional Order was signed by Circuit Judge Roberts for additional time to file the Brief (RE 8). At no time was the Appellant ever notified of any deficiencies. Specifically, it is significant what was stated in the *Brown* case against Horseshoe Casino. On page two (2) of the Opinion, it is stated as follows:

“On February 21, 2008, Horseshoe Casino filed a Motion to Dismiss in the Circuit Court. The Circuit Court did not rule on the Motion because the record was sent to the Supreme Court for this appeal. An appeal may be dismissed upon motion of a party or on motion of an appropriate appellate court when the court determines there is an obvious failure to prosecute an appeal; or when a party fails to comply substantially with these rules. When either court, on its own motion or on the motion of a party, determines that dismissal may be warranted under Rule 2(A)(2), the Supreme Court shall give written notice to the party in default, apprising the party of the nature of the deficiency. If the party in default fails to correct the deficiency within fourteen days after notification, the appeal shall be dismissed by the Clerk of the Supreme Court. The attorney for the party in default has the burden to correct any deficiency or see that the default is corrected by the appropriate official.”

Under the rules in the Circuit Court Rules of Procedure indicate that appeals to the Circuit Court from County Court are on the record and are handled in the same fashion or under the same rules as appeals to the Supreme Court.

In the *Brown* , the following is stated, on page two:

“In this particular case before the Court, filed by the Appellant, when the Circuit Judge gave deadlines and extensions for the filing of Briefs, the Appellant was totally unaware that there was any deficiency with respect to the filing of the proper appeal. If any

indication had ever been given that he had failed to do something, Appellant would clearly indicate and does clearly state that such problems would have been immediately resolved.”

Again, in *Brown*, the Court goes on to state: “the Supreme Court decided a similar case in *Van Meter v. Alford*, 774 So. 2d 430 (Miss. 2000). Van Meter timely filed his Notice of Appeal but was delinquent in the filing of a Designation of the Record, estimation of costs, and Rule 11(b)(1) Certificate of Compliance.” *Id.* at 432. Each of these requirements for an appeal are to be filed within seven (7) days of notice of an appeal. (Citing Mississippi Rules of Appellate Procedure 10(b)(1)). However, Van Meter was never given official notice from the Clerk of the deficiencies of his appeal by Rule 2(a) (2). *Id.* at 3.

Again, this case is very similar. It is almost the same. Where the appeal is filed in the Circuit Court and Circuit Judges enter Orders extending the Briefing Schedule and the Circuit Clerk is the Chief Clerk of the County Court and no notice is ever given of any type, by letter or otherwise, that there is any type of deficiency, then under such circumstances due process is violated by failing to give Appellant the opportunity to correct the deficiency when the proper Court cost has been accepted for the appeal, and the appeal has been filed, and in the proper Court as required by the rules and statutes of this state. There are other cases which stand for the same proposition that once an appeal is filed, and the Court costs are paid and the appeal is filed and is pending in the Appellate Court,

that some opportunity should be given to the Appellant to correct any technical deficiencies, and that the Appellant should be notified of these deficiencies. Also, consideration should be given for the fact that the record is complete and replete with evidences of health and personal problems of Appellant's attorney, which affected his ability to, at that particular time, see that all of the technicalities were met, which would in itself constitute excusable neglect with respect to some of these procedural technicalities (RE 11-14).

The entire judicial system and appellate process is perverted and defeated if appeals are dismissed on technicalities when there has been a clear intent in a timely basis to file an appeal and the Appellant has indicated a desire to appeal, and by way of some technicality, of which the Appellant has never been notified by the Clerk, the appeals court never gets to the merits of the case to decide whether or not justice has been properly applied and performed in the lower level Courts. This is the situation in the present case. Granted, there were apparently some deficiencies in the filing, and some of the proper rules were apparently not followed. However, the Court abused its discretion in not granting to the Appellant the opportunity to correct these deficiencies within a reasonable period of time. The Rules required that the Appellant be given fourteen (14) days' notice of the specific deficiencies, and this Notice was never given. The Circuit Court could have done the same thing. It could have given the Appellant seven (7) days, or fourteen (14) days, to correct the deficiencies and pay the proper Court costs.

None of this was done. The Circuit Court simply said the technicalities required that the appeal be dismissed. This was an abuse, clearly, of discretion and of the policy that promotes a clear judicial determination of the merits of the appeal and for these reasons, this entire case, including the Issue I should be heard and considered by the Supreme Court of Mississippi with a Decision made on both Issues, or in the alternative, the case should be remanded to the Circuit Court for a hearing and ruling on the Appeal.

CONCLUSION

The *Doctrine of Sovereign Immunity* as being one of the exceptions under the Mississippi Tort Claims Act, does not clothe and provide protection to the Clerk of a municipal Court for a ministerial act of improperly sending an Abstract to the Department of Public Safety. Although there is a *Doctrine of Judicial Immunity*, these actions of the Clerk fall outside of judicial action and are a function of a ministerial duty to mail these abstracts to the Department of Public Safety, and therefore do not fall within an accepted area of protection which provides immunity, and therefore, the case should not have been dismissed on the ground of sovereign immunity.

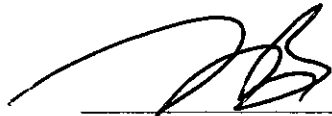
With respect to the dismissal of the appeal, the Court clearly abused its discretion in that decisions on the merits of cases are favored when an appeal is filed. This Court has on numerous occasions reinstated appeals, allowed out of time appeals, and has on its own Rules clearly stated that if there is any kind of

deficiency which is what this case was dismissed on, deficiencies such as proper Designation of the Record and proper payment of all of the costs, then this Court has repeatedly held that due process requires that the Appellant be given notice to correct these problems, and no such notice was ever given, and for this reason, the Circuit Court should not have dismissed the appeal.

The Appellant asks that the Supreme Court hear this case in the Supreme Court to hear this issue at this time and find that the Circuit Court erred in dismissing the appeal and go ahead and rule on the issue which the Circuit Court was going to have to rule on dealing with the immunity of the Circuit Clerk for performing a ministerial function, without the necessity of sending the case back to the Circuit Judge to rule on and then regardless of his ruling on the subject of this case to come back to the Supreme Court again with respect to whatever that ruling is.

The Appellant prays for such other relief is proper under the circumstances.

DATED, this 29 day of Dec, 2009



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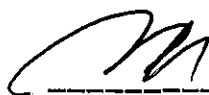
CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I, the undersigned, GENE BARTON, Attorney for the Appellant, William Smith, have this date filed a true, correct and exact copy of the above and foregoing Brief of Appellant, William Smith, and on said date served a true, correct and exact copy of said document upon the hereinafter named parties, via United States Mail, First Class, postage prepaid, the same being their last known and now existing post office addresses, respectively:

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SO CERTIFIED, this the 29 day of Dec, 209.



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