2009-CA-01197 RT

TABLE OF CONTENTS

	PAGE(S)
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
STATEMENT REGARDING ORAL ARGUMENT	iv
SUMMARY OF ARGUMENT	1
ERRONEOUS STATEMENTS PURPORTING AS "STATEMENT OF THE FACTS"	2
LEGAL ARGUMENT AND AUTHORITIES	4
I. WHETHER THE LOWER COURT ERRED IN ITS DECISION THAT UNDER A MAYOR-COUNCIL FORM OF GOVERNMENT, THE MAYOR HAS AUTHORITY TO TERMINATE A HOLDOVER CITY ATTORNEY?	4
II. WHETHER THE APPELLEE MET HER BURDEN OF PROOF FOR THE ISSUANCE OF INJUNCTIVE RELIEF?	13
CONCLUSION	18
CERTIFICATE OF SERVICE	19

TABLE OF AUTHORITIES

PAGE(S)

Chase v. State, 754 So.2d 598 (Miss. App. 2000).....10

Christiansen v. Griffin, 398 So.2d 213, 216 (Miss. 1981).....6

City of Moss Point v. Talmadge L. Miller, et al., 608 So.2d 1332 (1992).....12

City of Waynesboro v. McMichael, 856 So.2d 474 (Miss. Ct. App. 2003).....5,6,10,11

Cox v. Trustmark National Bank, 733 So.2d 353 (Miss. Ct. App. 1999).....5,6,7,10

Curphy v. Terrell, 89 Miss. 624, 42 So. 235 (1906).....8

Dupree v. Carroll, 967 So.2d 27 (Miss. 2007).....11

Grisham v. Hinton, 490 So.2d 1201, 1206 (Miss. 1986).....6

In re D.O. & T.O., Minors, 798 So.2d 417 (Miss. App. 2001).....10

J.E. W. v. T.G.S., 935 So.2d 954, 961 (Miss. 2006).....9

Jordan v. Smith, 669 So.2d 752 (Miss. 1996).....11

Kelso v. McGowan, 604 So.2d 729 (Miss. 1992).....5,7,8,10

Koestler v. Koestler, 976 So.2d 372 (Miss. App. 2008).....8

New Orleans, M. & C.R. Co. v. Martin, 105 Miss. 230, 62 So.228, 229 (1913).....8

McNeese v. Hutchinson, 724 So.2d 451 (Miss. Ct. App.1998).....5

Moore v. Sanders, 558 So.2d 1383 (Miss. 1990).....15

Rice Researchers, Inc. Hiter, 512 So.2d 1259, 1270-71 (Miss. 1987).....6

Sartin v. Barlow, 16 So.2d 372, 376 (Miss. 1944).....9

Strong v. Bostick, 420 So.2d 1356, 1359 (Miss. 1982).....9

Taylor v. State, 754 So.2d 598 (Miss. App. 2000).....10

Thompson v. Jones County Community Hospital, 352 So.2d 795 (Miss. 1977).....12

Young v. Deaton, 766 So.2d 819 (Miss. Ct. App. 2000).....5,6

OTHERS:

3 Am. Jur., p. 310.....9

4 C.J.S., Appeal and Error, Sec. 1854, pp. 1945-1947, note 24.....9

38 C.J., p. 949, note 66.....9

Mississippi Code Section 11-13-37.....7

M.C.A. (Supp. 1999) Section 11-55-5.....6

M.C.A. 1972 (as amended) Section 21-8-23.....4,13,14

M.C.A. 1972 (as amended) Section 21-8-23(3).....14

M.C.A. 1972 (as amended) Section 21-15-17.....12

M.C.A. 1972 (as amended) Section 21-15-25.....4,13

M.C.A. 1972 (as amended) Section 25-1-7.....1,11,14

M.C.A. (as amended) Section 25-15-25.....1
M.R.C.P. 11.....5

M.R.C.P. 65 (2000).....7

M.R.C.P 65(c).....7,11

STATEMENT REGARDING ORAL ARGUMENT

Appellant believes that oral argument would be immensely beneficial in assisting this Court to obtain a grasp and complete understanding of the environment and atmosphere within which the events described herein unfolded and will provide the Court with additional insight into the extent to which Appellee attempts to distort statements of facts. Further, Appellant believes that oral argument will be immensely beneficial to the Court in demonstrating how the lower court erred in granting the injunction without a finding that the four prerequisites ((1) likelihood of success, (2) irreparable harm, (3) balance of interest, and (4) public interest) were present. In addition, the lower court failed to address the traditional requirement that an injunction may be issued only when there is no adequate remedy at law. Appellee had available to her adequate and available remedies at law. In her Brief, Appellee concedes that she had an adequate remedy at law (Quo Warranto Proceedings) but she declared that any harm of not seeking her remedy at law was harmless error.

The decision of the lower court, if not corrected, will have vital ramification for courts considering the issuance of injunctive relief because it conveys the illusion that the standard requisites are no longer enforceable.

SUMMARY OF ARGUMENT

Appellant, James K. Littleton, hereby replies to the brief submitted by Appellee. Appellant will address those points raised by Appellee without conceding that she has adequately responded to the contentions advanced by Appellant in his Opening Brief. Appellee has produced no authority to support her contention that as mayor she has the right to terminate an annually appointed city attorney pursuant to Section 25-15-25 M.C.A. (1972) as amended.

Also, Appellee has failed to demonstrate how she met her burden of proof for the issuance of injunctive relief. She concedes that she had an adequate remedy at law but contends it was a harmless error when she failed to pursue her legal remedy.

Finally, Appellee failed to address the contention that a person wrongfully enjoined may recover the fees and costs of fighting the injunction. Appellant cited authorities supporting this contention and Appellee's Brief is silent. This silence must be considered as a confession or acquiescence.

This Court is urged to find that the lower court erred in its finding that Appellee had the authority to terminate a city attorney holding over under Section 25-1-7 M.C.A. (1972) as amended. Also, this Court is encouraged to find that Appellee failed to meet her burden of proof to show her entitlement to injunctive relief.

Finally, this Court is requested to reverse the decision of the lower court and remand this matter with instructions to order an assessment of fees, costs and expenses in Appellant's favor and to order general relief.

ERRONEOUS STATEMENTS
PURPORTING AS "STATEMENT OF THE FACTS"

At page 5 of Brief of Appellee, several statements are made which are argumentative and not statement of fact or not statement of fact documented in this appeal.

In the second sentence of paragraph numbered 2 on page 5 of the Brief, Appellee states: "[u]nder these statutes Defendant Littleton was authorized to continue to serve as a holdover appointment, unless specifically terminated by the mayor, until his successor had been nominated by the mayor and approved by the council." This is not a statement of fact but an issue to be decided by this Court on appeal.

Beginning with the second sentence of the fourth (4th) paragraph on page 5 of her Brief, she states "[Mr. Littleton] further announced his intention to those assembled and the world at large that, regardless of what the mayor might prefer, he was going to continue to serve as the Greenwood City Attorney, unless and until his successor had been appointed by the council. In fact, he went so far as to announce, the council could not function without his assistance and presence at their meetings." There is no reference to any transcript or record to document or prove that this is a statement of fact. This alleged fact is taken directly from paragraph numbered 8 of the Verified Complaint for Injunctive & Related Relief (R.4). In his Answer and Affirmative Defenses to Verified Complaint for Injunctive & Related Relief, to paragraph numbered 8, Littleton admitted the allegations contained in this paragraph which purports that he attended the July 7, 2009, meeting of the Greenwood City Council and served as City Attorney and

made certain comments and advised the council but stated that other comments have been distorted and taken out of context by the plaintiff and are denied. (R.114).

Further, in the first paragraph on page 6 of her Brief, Appellee states as follows:

> At this same Council meeting the remaining five defendants voted to turn down the Mayor's nomination of the law firm of Abraham & Rideout to serve during the upcoming year as the city attorney for the City of Greenwood and further announced they were satisfied with Defendant Littleton and, at a minimum, implied by their silence that as a holdover he could continue to serve until his successor had been appointed by the Mayor and approved by the Council. (MY EMPHASIS ADDED).

Appellee makes reference to the Record on Appeal at pages 44-46 to document this alleged fact. A review of this reference reveals that the source of this alleged fact is the Memorandum of Law in Support of Plaintiff's Claim for Injunctive Relief. It is a verbatim copy of paragraph numbered 9 of the Verified Complaint for Injunctive & Related Relief.

(R.4). In their Answer and Affirmative Defense, the City Council Defendants responded to paragraph numbered 9 by admitting the allegations that they voted to turn down the mayor's nomination of the law firm of Abraham & Rideout to serve as city attorney, but they denied all of the remaining allegations of paragraph 9 of the Complaint.

The Brief of Appellee is full of distorted statements pretending to be facts when in reality they are nothing short of meritless arguments of Appellee.

LEGAL ARGUMENTS AND AUTHORITIES

I. WHETHER THE LOWER COURT ERRED IN ITS DECISION THAT UNDER A MAYOR-COUNCIL FORM OF GOVERNMENT, THE MAYOR HAS AUTHORITY TO TERMINATE A HOLDOVER CITY ATTORNEY?

Appellant responds to Brief of Appellee without conceding that she adequately addressed points raised in his Opening Brief. Specifically, Appellee failed to adequately address whether she had authority to terminate a holdover city attorney. She failed to address the clear distinction between a city attorney appointed pursuant to 21-15-25 and the creation of a legal department head pursuant to 21-8-23. Also, she failed to address the contention and authorities that a person wrongfully enjoined may recover the costs and fees of fighting the injunction.

In view of the fact that Appellee has not adequately addressed or refuted contentions, principles and authorities set forth at pages 5-11 of Brief of Appellant, Appellant incorporates same herein by reference and requests this Court to find the lower court erred in issuing the injunction and to grant the relief Appellant seeks on this appeal.

Appellee contends at page 9 of her Brief that this case is moot unless a judgment on the merits would be of same practical value to Appellant. She erroneously states at page 10 of her brief "[in] fact Mr. Perkins in his Brief admits the issue is moot. Appellee makes this reference to page 19 of Brief of Appellant.

At page 19 of his Brief, Appellant stated as follows:

> In view of the reasons and authorities stated above, this Court should find that the lower court erred in its issuance of the injunction. This finding by this Court cannot undo the harm caused to Appellant because the city attorney vacancy has been filled. The Greenwood City Council at a meeting on September 1, 2009, confirmed and approved the mayor's nomination of Donnie Brock, III as the new city attorney. Six councilmen voted for the nomination and one abstained from voting.
>
> But a person wrongfully enjoined may recover the cost of fighting the injunction. See *Young v. Deaton*, 766 So.2d 819 (Miss. Ct. App. 2000). Rule 65 (c) allows a person wrongfully enjoined to recover fees and damages. See *Cox v. Trustmark National Bank*, 733 So.2d 353 (Miss. Ct. App. 1999); *City of Waynesboro v. McMichael*, 856 So.2d 474 (Miss. Ct. App. 2003); *McNeese v. Hutchinson*, 724 So.2d 451 (Miss. Ct. App. 1998); and *Kelso v. McGowan*, 604 So.2d 729 (Miss. 1992). (MY EMPHASIS ADDED).

It takes a very wide stretch of the imagination plus more to treat this statement as an admission of mootness. Appellant merely acknowledged the limitation on relief available to him by this Court since the vacancy for the city attorney position was subsequently filled by the Council. This is hardly an admission of mootness.

Also, Appellant made it clear that a person wrongfully enjoined may recover the cost of fighting the injunction and cited several authorities. In her Brief, Appellee failed to address these authorities or even to recognize this point raised on appeal. In fact, she failed to even cite either case in her brief.

In *Young v. Deaton*, *supra*, the Court of Appeals, in a divorce contempt case, set forth the basis for awarding fees as follows:

> A litigant must show something more than the fact that she prevailed in order to recover attorney's fees in most forms of litigation. Mississippi Rule of Civil Procedure 11 contemplates

> the award of fees in instances involving frivolous or bad-faith litigation, as does the Litigation Accountability Act of 1988, Section 11-55-5 of the Mississippi Code Annotated (Supp. 1999). A person wrongfully enjoined and thus prevented even temporarily from pursuing some lawful pursuit may, as a component of being made whole, recover the costs of fighting the injunction. M.R.C.P. 65 (2000). See also *Cox v. Trustmark Nat'l Bank, 733 So.2d 353* (¶ 9) (Miss. Ct. App. 1999) ("The wrongful acquisition of a preliminary injunction permits the enjoined party to recover damages and attorneys' fees.") Additionally, parties may by contract make attorney's fees an item of recoverable damages. *Grisham v. Hinton*, 490 So.2d 1201, 1206 (Miss. 1986) ("Of course, parties may by contract provide that in the event of dispute, the losing party must pay the winner attorney's fees."). See also *Christiansen v. Griffin*, 398 So.2d 213, 216 (Miss. 1981).
>
> 766 So.2d at 822.

In *Young v. Deaton, supra*, the Court reversed the award of attorney's fee because there was no proper basis to award fees to Mrs. Young.

City of Waynesboro v. McMichael, supra, involves the city obtaining a temporary and preliminary injunction against landowners who erected a fence across a city street. At the trial the Chancellor found that the city did not have fee simple title in the street and awarded the landowners attorney's fees, survey costs, expert witnesses fees and appraisal fees. On appeal the city contested the finding and specifically argued that the Chancellor erred in awarding damages in the absence of any specific request for such fees and in contradiction of established statutes and case laws.

The Court of Appeals in its decision upholding the award of fees and costs cited *Rice Researchers, Inc. Hiter, 512 So.2d 1259, 1270-71 (Miss. 1987) as follows ". . . where the entire relief sought is controlled by the injunction, attorney's fees are*

allowable, even though there is no preliminary motion to dissolve the injunction and the injunction is not dissolved until the final hearing on the merits" 856 So.2d at 479. Also, the Court relied upon the relevant portion of Rule 65 (c), MRCP as follows:

> *No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs, damages, and reasonable attorney's fees as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained . . .*
>
> 856 So.2d at 479-80.

Cox v. Trustmark National Bank, supra involves the bank being granted an injunction for an easement by necessity as to land-locked tract. At the time of appeal, the easement by necessity had expired or no longer existed. The issue of mootness was raised. The Court stated that unless Cox can show some continuing controversy the appeal must be dismissed. The Court stated as follows:

> The one claim that Cox asserts is still alive is whether Trustmark's injunction was wrongfully entered. The wrongful acquisition of a preliminary injunction permits the enjoined party to recover damages and attorneys' fees. The right to damages and fees is established by both rule and statute:
>
> > No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs, damages, and reasonable attorney's fees as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.
>
> M.R.C.P. 65(c), Mississippi Code Section 11-13-37 has been held to be an independent basis to permit the award of attorney's fees upon dissolution of an injunction. *Kelso v. McGowan*, 604 So.2d 725, 733-734 (Miss. 1992).

733 So.2d at 355-56.

The Court did not dismiss the appeal on the mootness doctrine but denied fees on the basis the granting of the injunction was not wrongful.

In *Kelso v. McGowan, supra*, the Court of Appeals citing *Curphy v. Terrell*, 89 Miss. 624, 42 So.235 (1906) held the chancellor can increase an award of attorney's fees following trial even "without any amended bill having been filed, and without any further steps to cause additional attorneys' fees." Id., 89 Miss. at 625, 42 So. 235; see also *New Orleans, M. & C.R. Co. v. Martin*, 105 Miss. 230, 62 So. 228, 229 (1913)(amount of attorney's fees in dissolving wrongful injunction left to chancellor's discretion. 604 So.2d at 734.

There is no validity to Appellee's argument of mootness. There is a continuing controversy as to whether the injunction was wrongfully entered and whether Appellant is entitled to recover fees and costs for fighting the injunction.

At page 10 of her brief, Appellee cites *Koestler v. Koestler*, 976 So.2d 372 (Miss. App. 2008) as an exception to the mootness doctrine, "capable of repetition yet evading review." Appellee contends that Appellant cannot meet the second criterion that there is a reasonable expectation that the same complaining party would be subject to the same action again. She analyzed this criterion to be personal between she and Appellant. However, the correct analysis is whether there is a reasonable expectation that a holdover city attorney will be subject to the same action again by a mayor of Greenwood. Appellant thinks so and believes the challenged action will be too short in duration to be fully litigated prior to its cessation. Also, given the old adage that politics

make strange bedfellows, it is conceivable that Littleton may be subjected to this same action again.

In addition, Appellant contends that the claims presented by him are not moot as the question of mootness is not applied to matters of public interest. *J.E.W. v. T.G.S.*, 935 So.2d 954, 961 (Miss. 2006); *Strong v. Bostick*, 420 So.2d 1356, 1359 (Miss. 1982); and *Sartin v. Barlow*, 16 So.2d 372, 376 (Miss. 1944).

In *Sartin v. Barlow, supra*, the court said:

> While it is well established in this state, as well as elsewhere, that as a general rule an appeal will be dismissed when no useful purpose could be accomplished by entertaining it, when so far as concerns any practical ends to be served the decision upon the legal questions involved would be merely academic, it has, on the other hand, been broadly stated that the rule will not be applied when the question or questions involved are matters affecting the public interest. 3 Am. Jur., p. 310. That statement is made more accurate, however, by the further statement that there is an exception to the general rule as respects moot cases, when the question concerns a matter of such a nature that it would be distinctly detrimental to the public interest that there should be a failure by the dismissal to declare and enforce a rule for future conduct. See, text and authorities 4 C.J.S., Appeal and Error, Sec. 1854, pp. 1945-1947, note 24, and 38 C.J., p. 949, note 66. The exception is of a compelling propriety in the present instance, for if we were to dismiss this appeal without disposing of the legal questions here involved and without declaring the rule of law which must be observed, and doing nothing for its enforcement, the way would thereby be made plain to corrupt politics by which to work a practical repeal of our Corrupt Practices Act, and by which the evils which existed before its passage could be revived, and that way would be simply to follow the course taken in the facts disclosed by the present record.
>
> 196 Miss. at 169-70. (My Emphasis Added).

Also, see *Strong v. Bostick, supra*, holding mootness doctrine did not apply to the period during which hunting deer with dogs was prohibited had expired.

At page 11 of her Brief, Appellee contends that this Court may not grant an award of fees and costs since Littleton did not seek this relief before the trial court. At page 12, she cited several cases to support this proposition that a trial court will not be reversed for failing to grant relief not requested, namely; *Chase v. State*, 754 So.2d 598 (Miss. App. 2000); and *In re D.O. & T.O. Minors*, 798 So.2d 417 (Miss. App. 2001). All three authorities arises from criminal or related matters and are totally inapplicable to the facts in the case sub judice.

In *Chase v. State, supra*, a capital murder case (robbery), the court held that Chase never requested individual sequestered voir dire and is precluded from raising the claim on appeal.

In *In re D.O. & T.O. Minors*, involving a youth court sexually abused and neglected matter, the court held the fact that no hearsay objection was made when statements of sexual abuse were proffered at trial bars the argument on appeal.

In *Taylor v. State, supra*, involving a conviction of three counts of embezzlement of public funds, the court held that defendant was barred from raising on appeal that the trial court committed plain error by overruling his motion for a continuance when in fact defendant never requested a continuance.

Unlike the facts set forth in the above criminal and criminal related cases, this civil case involves whether or not Appellant who was wrongfully enjoined is entitled to recover the cost for fighting the injunction. See *Young v. Dean, supra, Cox v. Trustmark Nat'l Bank, supra, City of Waynesboro v. McDaniel, Kelso v. McGowan, supra.*

As stated above, in *City of Waynesboro v. McMichael*, the city's argument on appeal that the chancellor erred in awarding damages and fees in the absence of any request was deemed to be without merits. Likewise, the argument advanced by Appellee on this appeal is without merits. Fees are authorized by the above authorities and, by the Statute and Rule 65 (c), M.R.C.P.

At page 12 of her Brief, Appellee argues in essence that Littleton had no right to holdover as city attorney, pursuant to 25-1-7 M.C.A. 1972 (as amended) since she terminated his service by letter dated July 6, 2009. After stating this clumsy contention, Appellee set forth nine and three-fourth (9 3/4) pages (13-22) of wholly irrelevant information regarding prior litigations, decisions, dissents, and Attorney General Opinions which have nothing whatsoever to do with the issue before this Court. To reveal how ridiculous this discussion is, Appellee states at page 18 of her Brief that "[t]he only case could be considered a follow-on [to *Jordan v. Smith,* 669 So.2d 752 (Miss. 1996] would be *Dupree v. Carroll*, 967 So.2d 27 (Miss. 2007)." She later states at page 18 that "[t]he Dupree court did not discuss and, in fact, did not even cite *Jordan v. Smith."*

The reason is quite simple, everyone except Appellee knows that *Jordan v. Smith, supra*, raise the question of whether the mayor has the sole authority to appoint the city attorney without the confirmation of the council and *Dupree, supra*, raised the question of whether at the beginning of a new term the mayor was required to submit the names of his department heads for approval by the council. The issues raised in the two cases are separate and distinct as day and night.

At page 22 of her Brief, Appellee creates an artificial issue and then proceed to discuss and answer it. She stated that "[t]he Greenwood City Council could not have re-hired James Littleton without a mayoral nomination. At page 22, she cites certain Attorney General Opinions stating that the council cannot hire an attorney and call him a clerk or assistant clerk. Further, she cites an Opinion stating that there is no authority for a city council to hire an attorney to provide advice to the council under the guise of appointing a deputy council clerk.

The problem with this contention is the total failure of Appellee to point to any facts in the record to demonstrate that the council voted to hire Littleton without the mayor's nomination or voted to hire him as a clerk or appoint him as a deputy council clerk. In fact, Appellee never made any such assertion or allegations throughout the trial. To say the very least, the record do not support any action by the council to hire Littleton as city attorney or in any other capacity. Appellee failed to produce any Minutes of the Greenwood City Council to prove facts she is alleging on appeal. The City of Greenwood, a public body speaks and speaks only through its Minutes. See Miss. Code Ann. 1972 (as amended) Section 21-15-17.

It has been held many times that Minutes are the only evidence of official actions by a municipality. See *City of Moss Point v. Talmadge L. Miller, et al.*, 608 So.2d 1332 (1992) and *Thompson v. Jones County Community Hospital,* 352 So.2d 795 (Miss. 1977).

Since the lower court erred in its decision that the mayor had authority to terminate a holdover city attorney and erred in issuing the injunction, Appellant requests

this Court to reverse the lower court's decision and remand for an assessment of costs and fees.

II. WHETHER THE APPELLEE MET HER BURDEN OF PROOF FOR THE ISSUANCE OF INJUNCTIVE RELIEF?

At page 24 of her Brief, Appellee contends that she met her burden of proof for injunctive relief. Short of this self-serving declaration and her citing relief sought in the application for injunction, she set forth nothing in the Brief to support her contention. Appellee fails to address the Order of the Court wherein none of the requisites for granting injunctive relief are even mentioned.

Appellee fails to demonstrate a substantial likelihood of prevailing on the merits. She merely contends that since she has the authority to nominate the city attorney, she has the power to terminate the city attorney. No authority is cited by her to terminate a holdover city attorney. Appellee failed to show her appreciation for the appointment of an annual city attorney pursuant to Section 21-15-25 and the establishment of a legal department pursuant to Section 21-8-23. Needless to say, she failed to refute these points in Appellant's Brief. Appellee failed to demonstrate how the injunction was necessary to prevent irreparable harm. She contends that if Littleton was allowed to holdover she would suffer irreparable harm in that her exclusive right of appointment would be nullified. Appellee apparently forgot to tell the Court about how Littleton, by holdover, kept the city from missing grant deadlines, court deadlines, auditing deadlines and how he drafted board resolutions so the city could function at the meetings.

Appellee failed to tell this Court that since her purported letter to terminate Littleton, she sent a letter to him on August 19, 2009, as city attorney, to prepare a letter for the auditor. These and other contentions of irreparable harm set forth at pages 14-17 of Brief of Appellant remain unrefuted by Appellee.

Most importantly, Appellee forgot to tell the Court that her stubbornest in refusing to nominate another city attorney for approval to the city council is the only reason this matter is before this Court. Rather than submitting another nomination, she brought a lawsuit represented by the same law firm which was rejected by the council as city attorney. Further, she forgot to tell the Court that as soon as she nominated another city attorney, he was unanimously approved by the council. This clearly proves that there was no nullification of her appointment power but her refusal to exercise it once her first choice for city attorney was rejected.

Also, Appellee failed to address the balance of interest and public interest requirements for the granting of the injunction. At page 26 of the Brief of Appellee, she contends if the chancellor relied on the wrong statute when he based his decision on Section 21-8-23(3) rather than Section 25-1-7, any error made was harmless. This argument by Appellee misses the boat since the City of Greenwood has not established a legal department pursuant to Section 21-8-23. Had the city established a legal department, then the head could be terminated similar to any other department head. Also, the head of a legal department established under Section 21-8-23 is appointed on a 4-year term consistent with the appointing authority and would not face annual appointment. Contrary to Appellee's argument, the error by the chancellor in this matter

has nothing to do with a harmless error but has everything to do with a manifest error against the weight of the credible evidence or it was just totally erroneous.

At page 27 of her Brief, Appellee states that the fact that she used the injunctive process rather than quo warranto or mandamus was, at best, harmless error. Appellee cites four cases, all which involved issues in domestic divorces matters. The decisions in these cases have absolutely nothing to do with whether or not the lower court can issue an injunction when there is an adequate remedy at law. There is no such animal as a harmless error or a technical error if a court issue an injunction when the party has available and adequate remedies at law.

Traditional equity practice governs the issuance of injunctions. Injunctive relief will be denied if the party has an adequate remedy at law. *Moore v. Sanders*, 558 So.2d 1383 (Miss. 1990). Here, Appellee had an adequate remedy at law. Since she was complaining that Appellant Littleton was unlawfully and illegally holding over as city attorney, then she could have brought a quo warranto proceeding or other actions at law for a resolution of this matter. Since Appellee contended that the rejection of the Abraham & Rideout Law Firm by the Greenwood City Council constituted an abuse of discretion as discriminatory, arbitrary, capricious or unreasonable, then she could have sought a judicial review in the Circuit Court of Leflore County.

In her Brief, Appellee failed to address these adequate remedies at law which were available to her. She merely contends, erroneously, that whether she sought the extraordinary relief of an injunction versus available remedies at law, was harmless or a technical error.

At page 28 through 40 of her Brief, Appellee spent 12 pages writing about two (2) additional artificial issues created, discussed and answered by her. At page 28, Appellee states "Point V Answering Appellant's Irrelevant Arguments - Irrelevant Point One - This Lawsuit Was Not Racially Motivated As Mr. Perkins Seems To Infer." (MY EMPHASIS ADDED). On pages 35 and 36, Appellee states:

IRRELEVANT POINT TWO

> **"Willie Perkins Entire Argument Is Grounded On The Proposition That The Intent In Filing This Lawsuit Was Forcing The Defendants To Compromise With The Mayor On A Choice For City Attorney. Mr. Perkins Has Twisted And Contorted The Argument of Counsel To Suit His Own Needs Rather Than Giving It A Fair Reading. The Mayor's Counsel Argued That Under The Republican Form Of Government On Which Greenwood's Government Is Based, Power Is Diffused Between The Three Branches of Government In Order To Compel The Legislative To Compromise Rather Than Dictate To The Executive; and, That If This Court Were To Support An Independent Right In James Littleton To Hold Over, It Would Upset This Delicate Balance of Power." (My EMPHASIS ADDED).**

Again, neither of these issues created by Appellee, were raised by Appellant on appeal in this case. There is an old saying that a "hit dog" will holler.

In addition to a waste of the Court's time addressing issues not raised on appeal, Appellee's counsels have utilized these twelve (12) pages to make personal attacks upon Appellant's counsel and to show the total disrespect and courtesy to Appellant's counsel, to this Court and to the legal system. Throughout these 12 pages the following are stated:

(1) **". . . Perkins seems to infer (p. 28);**

(2) **footnote 10 nor was it politically motivated as Mr. Perkins alleges (p. 28);**

(3) Sadly, Willie Perkins, counsel for defendants, viewing this dispute through the lens of the 60's . . . (R.29);

(4) Willie Perkins entire argument is grounded . . . (pp. 35 & 36);

(5) . . . Mr. Perkins lacks a basic understanding . . . (36); and

(6) . . . reasoning of which Atty. Perkins is apparently unaware . . . (38).

These personal attacks by Appellee by and through her attorneys are a violation of the Mississippi Rules of Professional Conduct and should be referred to the Mississippi State Bar. While clearly violating the Rules, Appellee has the gall to make accusation at page 24 of her brief that Appellant has violated the Mississippi Rules of Professional Conduct by exercising his right as a holdover city attorney.

In addition to a referral of this matter to the Bar, this Court is requested to strike pages 28-40, except for the conclusion as sham or scandalous. These pages contains allegations which are not a part of the record (See page 29 - alleged history of Civil Rights Movement; footnote 12 at page 30 - information from a news article of The Greenwood Commonwealth; information on elected officials in Greenwood and Leflore County p. 30; mere allegations posing as documented facts (p. 33).

Finally, these pages are irrelevant to any issues raised on appeal. To say the very least, they offer no support to show how Appellee met her burden of proof for the issuance of injunctive relief.

CONCLUSION

In light of the foregoing reasons, authorities and principles, Appellant respectfully requests that this Honorable Court reverses the decision of the lower court and remands this matter with instructions to order an assessment of attorney's fees, costs and expenses against Appellee, and order the lower court to conduct a hearing to determine the extent and amount of fees, costs and expenses to be awarded and to order general relief.

Respectfully submitted, this the 1st **day of** Dec. **2010.**

BY: _____
WILLIE J. PERKINS, SR.
ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I, Willie J. Perkins, Sr., attorney for Appellant James K. Littleton, do hereby certify that I have this day caused to be mailed via U. S. Mail, postage prepaid, a true and correct paper copy and one true and correct computer readable diskette of the above and foregoing Reply Brief of Appellant unto the following person:

Lee Abraham, Esquire
Abraham & Rideout
Post Office Box 8407
Greenwood, MS 38935-8407

Honorable Joe C. Webster,
Special Judge
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