

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2009-CA-01683

**THOMAS FOSTER, CLARENCE POWELL.
ROY L. WILLIAMS and HUE L. FLEMING
for the use of THE CITY OF RULEVILLE,
MISSISSIPPI**

APPELLANTS

VS.

**SHIRLEY EDWARDS, HATTIE ROBINSON
JORDAN, JAMES JOHNSON, JOHNNY HILL
MARIO ROBINSON and JAMES BUTCH JENKINS
in their individual capacities**

APPELLEES

*On Appeal from the Circuit Court of
Sunflower County, Mississippi
Circuit Court No. 2008-0467*

BRIEF OF APPELLEES

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for Appellees 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. The Honorable Richard Smith, Circuit Court of Sunflower County, Mississippi, Trial Judge;
2. The City of Ruleville, Mississippi;
3. Thomas Foster, Clarence Powell, Roy L. Williams, and Hugh Fleming, Appellants;
4. Daniel J. Griffith, Griffith and Griffith Attorneys, Cleveland, Mississippi, Attorney for Appellees;
5. Shirley J. Edwards, Mayor of the City of Ruleville, Mississippi;
6. James Butch Jenkins, Alderperson for the City of Ruleville, Mississippi;

7. James Johnson, former Alderperson for the City of Ruleville, Mississippi;
8. Hattie R. Jordan, former Alderperson for the City of Ruleville, Mississippi;
9. Mario Robinson, former Alderperson for the City of Ruleville, Mississippi;
10. Johnny Hill, former Alderperson for the City of Ruleville, Mississippi;

CERTIFIED this 25th day of June, 2010.



Daniel J. Griffith, MS Bar No. [REDACTED]
Attorney for Appellees

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ORAL ARGUMENT IS NOT REQUESTED

The instant appeal is resolved by clearly established law. Oral argument is not requested.

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BRIEF OF APPELLEES

I. Statement of the Issues

1. The Trial Court correctly held that it was bound by the prior Chancery Court Ruling.
2. Collateral Estoppel and Res Judicata apply.
3. Summary Judgment consideration is proper.

II. Statement of the Case

A. Nature of the Case

This is an appeal from an ineffective challenge to municipal action. The City of Ruleville is a Code Charter Municipality located in Sunflower County, Mississippi. The Appellants (Foster, et al) were aggrieved by municipal action of the City of Ruleville, but they failed to appeal their grievances to the Circuit Court Sunflower County, Mississippi as required by *Miss. Code Ann.* §11-51-75. Following dismissal of an improperly filed action in the Chancery Court of Sunflower County, the Foster Group re-filed in the same claims of illegal municipal action in the Circuit Court of Sunflower County. The Circuit Court of Sunflower County properly followed controlling authority. The Foster Group now appeals entry of summary judgment by the Circuit Court.

B. Course of Proceedings and Disposition in Lower Court

Following briefing, oral argument, an initial ruling and still more briefing, the Circuit Court entered its opinion and final judgment in favor of the Appellees. The Appellees respectfully submit this brief in opposition to appeal.

C. Standard of Review

This appeal is resolved upon issues of law and should be reviewed under a *de novo* standard. Broome v. City of Columbia, 952 So. 2d 1050 (Miss. Ct. App. 2007)(Citing City of Jackson v. Brister, 838 So. 2d 274, 277-78 (Miss. 2003).

III. Statement of the Facts

The “Foster Group” is a group of concerned citizens of the City of Ruleville who had previously petitioned the City with their grievances regarding garbage service and grave digging.¹ The record reflects no dispute that in 2006 the City of Ruleville issued a refund as corrective action for a 2005 change in household garbage rates which was in turn refunded to the City by the vendor.² Long after expiration of the time provided for an appeal of illegal municipal action, the Foster Group filed suit in the Chancery Court of Sunflower County against the City, Mayor and Alderpersons, individually and in their official capacities.³ The Chancery Complaint does not mention *Miss. Code Ann.* §11-51-75.⁴ Instead, the Foster Group purported to file their initial Chancery Complaint suit pursuant to *Miss. Code Ann.* §31-7-57.⁵ The Chancery Defendants, including the City of Ruleville and its Mayor and Alderpersons in their individual capacities, took the position that by operation of *Miss. Code Ann.* §11-51-75, the legality of the actions questioned were no longer subject to being

¹R. 123.

²R. 50.

³*Id.*

⁴R. 41-48; See Also *Miss. Code Ann.* §11-51-75 states in 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, ...”

⁵*Id.*; See Also: *Miss. Code Ann.* §31-7-57 (1) states in part that “any elected or appointed public officer of an agency or a governing authority, or the executive head, any employee or agent of an agency or governing authority, who appropriates or authorizes the expenditure of any money to an object not authorized by law, shall be liable personally ...”.

challenged.⁶ The Chancery Court found that *Miss. Code Ann.* §11-51-75 did indeed control.⁷ Thereafter, all claims were dismissed pursuant to *Miss. Code Ann.* §11-51-75. As part of its ruling, the Chancery Court declined to transfer the case to Circuit Court because the Chancery Plaintiffs made no such request prior to its ruling.⁸ All claims, individual and official, were dismissed.⁹ No appeal was taken.¹⁰ Instead, the Foster Group filed suit several months later in the Circuit Court of Sunflower County predicated upon the exact same claims of illegal municipal action.¹¹ Again, the Foster Group relied upon *Miss. Code Ann.* §31-7-57.¹² The Circuit Court case deleted the City as a Defendant and the Mayor and Alderpersons were named only in their individual capacities.¹³ In Circuit Court the Foster Group attempted to change their identity from (CHANCERY LANGUAGE) “individually and on behalf of the citizens of Ruleville”¹⁴; to (CIRCUIT LANGUAGE) “for the use and benefit of the City of Ruleville”.¹⁵

⁶The legality of the City’s actions cannot be challenged because there was no appeal pursuant to *Miss. Code Ann.* §11-51-75. Bowling v. Madison County Bd. of Sup’rs, 724 So. 2d 431 (Miss. 1998); Board of Supervisors of Jackson County v. Butler Services of Ms., (Miss. App. 1997); and, Falco Lime, Inc. v. City of Vicksburg, et al, 836 So. 2d 711 (Miss. 2002).

⁷R. 60.

⁸*Id.*

⁹R. 123.

¹⁰*Id.*

¹¹R. 4.

¹²R. 6.

¹³R. 4-5.

¹⁴R. 60.

¹⁵R. 4.

IV. Summary of the Argument

The Circuit Court correctly found that for all intent and purpose, the two suits are the same.¹⁶ The Circuit Court reasoned that the Chancery Court necessarily had to consider whether this same matter was an independent action or an appeal. The Circuit Court reasoned further that the Chancery Court either litigated these specific issues or they could have been litigated. The Circuit Court correctly applied the law and should be affirmed.

V. Argument

1. THE CIRCUIT COURT CORRECTLY FOUND THAT IT COULD NOT ASSUME JURISDICTION WHERE THIS MATTER WAS FIRST FILED IN CHANCERY COURT AND THEN DISMISSED WITHOUT BEING TRANSFERRED OR APPEALED.

On appeal, the Foster Group claims that the Chancery Court dismissed their case for a “matter of form” giving them one year to re-file pursuant to *Miss. Code Ann.* §15-1-69. This fails for three reasons. First, the plain language of §15-1-69 limits the relief to actions commenced within the time allowed. The Foster Group was clearly not timely. *Miss. Code Ann.* §11-51-75. Second, the plain language of §15-1-69 limits the relief to the original plaintiffs or their representatives. The Foster Group has bound themselves to a position which conflicts with this requirement.¹⁷ The Foster Group has clearly taken the position that their Circuit Court suit is a completely different matter with

¹⁶R. 129.

¹⁷*Sears, Roebuck & Co. v. Devers*, 405 So. 2d 898 (Miss. 1981)(Quoting *Noxubee County v. Long*, 141 Miss. 72, 106 So. 83 (1925))(When, during the course of a trial an attorney, with intent to influence the ruling or decision by the court on a point in issue, makes a solemn statement to the court committing his client to some legal position on the issue before the court, the client is bound thereby.).

different parties (“With respect to the identity of the parties, the City was a Defendant in the Chancery Court suit and is the Plaintiff in the Circuit Court action. Consequently, the City in the Circuit Court suit, and the Concerned Citizens in the Chancery Court suit are not in privity with one another.”) See Brief of Appellants, Page 12. Third, the Circuit Court case was not dismissed because the Foster Group waited too long to re-file. The Circuit Court ruled as a matter of law that it was bound by the prior Chancery Court ruling and that the Foster Group simply could not pose the same question to a different court. Hence, the Foster Group’s argument for tolling pursuant to *Miss. Code Ann.* §15-1-69 is not applicable here.

The Chancery Court of Sunflower County correctly found that *Miss. Code Ann.* §11-51-75 was controlling and dismissed the case for lack of jurisdiction. The ruling by the Chancery Court of Sunflower County represents a clear ruling that once a municipal action is final and no longer subject to challenge under *Miss. Code Ann.* §11-51-75, individual claims against the municipal officers who voted on the action are not subject to individual civil challenge.¹⁸ In fact, courts have repeatedly recognized that §11-51-75 is “*mandatory and jurisdictional*.”¹⁹ Yet, the Foster Group chose to pose the same question to a different court instead of requesting either a transfer or perfecting an appeal. Notably, the Mississippi Supreme Court has affirmed the action of the Leflore County Circuit Court in refusing to re-litigate a set of facts and issues which were governed by a ruling in a prior decision

¹⁸Final actions by municipal authorities or a board of supervisors were appealable under the statute, but an appeal had to be filed within the proscribed 10 days from the day of adjournment of the board of supervisors’ session, or the circuit court or appellate court will not have jurisdiction to consider the appeal. House v. Honea, 799 So. 2d 882 (Miss. 2001). A vote of the full Board was required to make such a decision. Thus, a single Board member “cannot be liable independently if [he] did not make the final decision.” Beattie v. Madison County School District, 254 F.3d 595, 601 (5th Cir. 2001).

¹⁹Falco Lime, Inc. v. City of Vicksburg, et al, 836 So. 2d 711 (Miss. 2002).

by the Leflore County Chancery Court.²⁰ If the Foster Group disagreed, an appeal should have been taken instead of re-filing in another court. It is fundamental that errors committed in the conduct of the trial should be raised before the trial court in a timely manner.²¹ By doing so, trial courts have the opportunity to correct perceived errors, and the time and resources of appellate courts are not wasted.²²

2. THE CIRCUIT COURT CORRECTLY APPLIED THE PRINCIPALS OF COLLATERAL ESTOPPEL AND RES JUDICATA.

"The doctrine of *collateral estoppel* serves a dual purpose. It protects litigants from the burden of relitigating an identical issue with the same party or his privy. It promotes judicial economy by preventing needless litigation."²³ *Collateral estoppel* is limited to questions actually litigated in a prior suit, and not to questions which might have been litigated.²⁴ Once a court decides an issue of fact or law necessary to its judgment, the doctrine of *collateral estoppel* prevents the same parties from relitigating that issue in a different action.²⁵ The Chancery Court of Sunflower County found that

²⁰ Smith v. Malouf, 826 So. 2d 1256 (Miss. 2002) (Circuit Judge Ashley Hines was affirmed for ruling that a Leflore Chancery Court consent judgment barred later suit in Leflore County Circuit Court, even where the relief being sought was different. The later suit arose out of the same facts and circumstances as governed by the initial chancery decree).

²¹ Wilson v. GMAC, 883 So. 2d 56 (Miss. 2004) (Citing Brown v. N. Jackson Nissan, Inc., 856 So. 2d 692 (Miss. Ct. App. 2003); Mitchell v. Glimm, 819 So.2d 548, 552 (Miss. Ct. App.2002); and, Gatlin v. State, 724 So. 2d 359, 369 (P43) (Miss. 1998)).

²² *Id.*

²³ Miss. Employment Security Commission v. Philadelphia Mun. Separate School Dist. of Neshoba County, 437 So.2d 388, 396 (Miss. 1983).

²⁴ Dunaway v. W.H. Hopper & Associates, 422 So.2d 749, 751 (Miss. 1982) (quoting Johnson v. Bagby, 252 Miss. 125, 171 So.2d 327 (Miss. 1965)).

²⁵ McCorkle v. Loumiss Timber Co., 760 So.2d 845, 854 (Miss. Ct. App. 2000).

Miss. Code Ann. §11-51-75 was controlling here. All claims were dismissed. No appeal was taken. The issue of illegal municipal action cannot be raised.

Strict identity of the parties is not necessary for *collateral estoppel* to apply if it can be shown that the parties are in privity. Smith v. Malouf, 826 So.2d 1256 (Miss. 2002). Like *collateral estoppel*, simply changing the court cause number or shuffling the Plaintiffs around does not avoid the impact of the law of the case doctrine. Fuhrman v. Dretke, 442 F.3d 893, 896 (5th Cir. 2006). Accordingly, the lower court correctly applied the principal of *collateral estoppel* in spite of the Foster Group's attempt to create a new group of Plaintiffs for the same cause of action.

Aggrieved by the actions of these municipal authorities, the Foster Group had the ability to bring the matter before the City and then challenge the result by appealing it to the Circuit Court of Sunflower County on the basis that:

- (1) The City's decision was not supported by substantial evidence;
- (2) The City's decision was arbitrary or capricious;
- (3) The City's decision was beyond the power of the City authority to make; or,
- (4) The City's decision violated some statutory or constitutional right.²⁶

The *res judicata* effect of a decision made in a bill of exceptions proceeding is widely recognized.²⁷ The Mississippi Supreme Court views a final decision on a bill of exceptions as any other judicial decision entitled to preclusive effect under traditional principles of *res judicata*.²⁸

²⁶Landmark Structures, Inc. v. City Council for Meridian, 826 So.2d 746 (Miss. 2002) (citing Bd. of Law Enforcement Officers Standards & Training v. Butler, 672 So. 2d 1196, 1199 (Miss. 1996)).

²⁷See Bowling v. Madison County Bd. of Sup'rs, 724 So.2d 431 (Miss. 1998) and Board of Supervisors of Jackson County v. Butler Services of Ms., (Miss. App. 1997).

²⁸Id.

If applicable, *res judicata* precludes all issues that could have been litigated.²⁹ The sole element of *res judicata* contested by the Foster Group below was the requirement of identity of the parties. The four named Circuit Court Plaintiffs, City, Mayor and Alderpersons, now alleged to be parties to the Circuit Court case, were all parties to the Chancery Court case. The law is a well-settled precedent that a judgment in an action in which a government agency represents private individuals is binding on those individuals.³⁰ Hence, the lower court properly recognized that the Foster Group cannot defeat the “same parties” element of *res judicata* by simply changing the City from a Defendant to a Plaintiff. Thus, the principles of *res judicata* preclude the Foster Group’s attempt to challenge the legality of municipal action in this case.

3. THE CIRCUIT COURT CORRECTLY GRANTED SUMMARY JUDGMENT.

The Defendants’ motion sought summary judgment in the alternative. The Defendants submitted matters outside the record which were considered by the trial court in rendering summary judgment.³¹ The Foster Group now argues that summary judgment was premature or improperly granted. The question actually concerns the movant’s burden rather than whether materials outside the pleadings were submitted and considered.³² Factually, the Foster Group argues that there was an absence of sufficient proof on the question of whether the City suffered damages as the result of

²⁹Dunaway v. W.H. Hopper & Assocs., Inc., 422 So.2d 749 (Miss. 1982).

³⁰Heckman v. United States, 224 U.S. 413, 445-46, 56 L. Ed. 820, 32 S. Ct. 424 (1912); see also, Jones v. Bell Helicopter Co., 614 F.2d 1389, 1389 (5th Cir. 1980)(Holding that an individual could not bring a private Title VII action based upon the same claim at issue in an earlier action brought by the EEOC on their behalf.).

³¹Kountouris v. Varvaris, 476 So.2d 599 (Miss. 1985).

³²Hartford Cas. Ins. Co. V. Halliburton Co., 826 So.2d 1206 (Miss. 2001).

illegal municipal action.³³ These arguments are simply immaterial to whether or not the mandatory and jurisdictional requirements of *Miss. Code Ann.* §11-51-75, were satisfied. Summary judgment consideration was proper here.

VI. Conclusion

This case is a failed attempt to raise a challenge to the legality of final municipal action. This is a clear case of a trial court efficiently and correctly applying the law. *Miss. R. App. P.* 38 allows an award of sanctions for frivolous appeals in civil cases. Defendants respectfully pray for their costs and fees in this action.

RESPECTFULLY SUBMITTED this 25th day of June, 2010.

**SHIRLEY EDWARDS, HATTIE ROBINSON
JORDAN, JAMES JOHNSON, JOHNNY HILL,
MARIO ROBINSON and JAMES BUTCH
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³³Brief of Appellants, Page 15.

CERTIFICATE OF SERVICE

I, Daniel J. Griffith, attorney of record for Appellees, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing *Brief of Appellees* to:

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Daniel J. Griffith