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CHANGING JURISDICTION IN CHANCERY COURT

Joseph M. Gianola, Jr.¹

I. INTRODUCTION

Mississippi is one of three states with separate courts of equity.² In light of the Mississippi Supreme Court's recent decisions regarding the subject matter jurisdiction of chancery courts, the time may be now for Mississippi to join forty-seven other states in allowing all equity matters to be heard in circuit court. The Mississippi Supreme Court, in one of its most recent opinions on this issue, decided that the chancery court did not have jurisdiction over a suit involving two equitable actions and three claims for equitable relief.³ Not only does the decision limit the matters that chancery courts can hear, but the case also calls into question matters of pendent jurisdiction, plaintiff's right to choose the forum, and perhaps the need to remove equity matters exclusively to circuit court.

II. INSTANT CASE: *UNION NATIONAL LIFE INSURANCE CO. v. CROSBY*

Over 350 plaintiffs, including Jacqueline Crosby, filed suit against Union National Life Insurance Company, United Insurance Company of America, Union National Fire Insurance Company, and their agents, from whom the plaintiffs had bought fire, life, and/or health insurance policies.⁴ The plaintiffs alleged that the defendants created policies to sell to low-income, uneducated, and unsophisticated individuals, and that the policies charged premiums that were extremely high in relation to the potential benefits to the plaintiffs and the risks to the defendants.⁵ They also alleged that the premiums were expensive; the benefits were minimal and non-increasing; and the insureds were required to pay premiums after the premiums had exceeded the cash values of the policies or they would lose what they had previously paid.⁶ The plaintiffs brought the action claiming fraud, fraudulent inducement, breach of duty of good faith and fair dealing, tortious breach of contract, breach of fiduciary duty, assumpsit, unjust enrichment, negligence, gross negligence, multiple violations of the Mississippi Consumer Protection Act, and conversion.⁷ They sought relief in the forms

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2. Morton Gitelman, *The Separation of Law and Equity and the Arkansas Chancery Courts: Historical Anomalies and Political Realities*, 17 U. ARK. LITTLE ROCK L.J. 215, 244 (1995); ARK. CONST. amend. 80 (2001).

3. *Union Nat'l Life Ins. Co. v. Crosby*, 870 So. 2d 1175 (Miss. 2004).

4. *Id.* at 1178.

5. *Id.* at 1179.

6. *Id.* at 1178.

7. *Id.*

of a constructive trust, accounting, injunctive relief, actual damages, and punitive damages.⁸

The case was filed in the Chancery Court of Covington County with Chancellor Larry Buffington presiding.⁹ Union National filed a motion to transfer the case to circuit court, claiming that the chancery court did not have subject matter jurisdiction.¹⁰ Chancellor Buffington denied Union National's motion to transfer, and the Mississippi Supreme Court granted Union National's request for an interlocutory appeal.¹¹ On interlocutory appeal, the court was to determine whether the suit was based in tort and contract or in equity.¹² The court considered each claim and relief sought separately in determining whether the chancery court had jurisdiction to hear the case.¹³

Although the court found that two of the five claims and three of the five remedies were based in equity, the court decided that "[i]t is more appropriate for a circuit court to hear equity claims than it is for a chancery court to hear actions at law since the circuit courts have general jurisdiction but chancery courts enjoy only limited jurisdiction."¹⁴ The court also expressed some concern that the defendants' "right to trial by jury would be infringed upon if th[e] case w[ere] heard in chancery court."¹⁵ It also based its decision on a "substance over form" view of the complaint, stating, "[a] realistic and pragmatic review of the complaint leads us to the conclusion that this is a lawsuit that should be [heard] in circuit court, not chancery court."¹⁶ In light of the "substance over form" argument, the court declared that the equitable claims and relief sought "arise from the sale and alleged breach of an insurance contract[,] not from the sale, administration, and service of the contract."¹⁷ Based upon these principles, the court decided the complaint was based predominantly in tort and contract, and that Union National's motion to transfer should have been granted.¹⁸

III. BACKGROUND AND HISTORY OF THE LAW

When addressing the subject matter jurisdiction of chancery court, most judicial discussions begin with the Mississippi Constitution, which states:

The chancery court shall have full jurisdiction in the following matters and cases, viz.: (a) All matters in equity; (b) Divorce and alimony; (c) Matters testamentary and of

8. *Id.* at 1178–79.

9. *Id.* at 1178.

10. *Id.*

11. *Id.* See MISS. R. APP. P. 5.

12. *Crosby*, 870 So. 2d at 1178.

13. *Id.* at 1178–82.

14. *Id.* at 1182 (quoting *S. Leisure Homes, Inc. v. Hardin*, 742 So. 2d 1088, 1090 (Miss. 1999)).

15. *Id.* at 1181.

16. *Id.*

17. *Id.*

18. *Id.* at 1182 (Justice Easley dissented; Justice Diaz did not participate).

administration; (d) Minor's business; (e) Cases of idiocy, lunacy, and persons of unsound mind; (f) All cases of which the said court had jurisdiction under the laws in force when this Constitution is put in operation.¹⁹

The earlier cases interpreted the constitution liberally. In search of a standard to apply, the Mississippi Supreme Court in one of its earlier opinions stated:

It is settled beyond question in this jurisdiction that where a suit is brought in the chancery court and the court takes jurisdiction on any one ground of equity, it will proceed in the one suit to a complete adjudication and settlement of every one of all the several disputed questions materially involved in the entire transaction, awarding by a single comprehensive decree all appropriate remedies, legal as well as equitable, although all the other questions involved would otherwise be purely of legal cognizance; and if the ground of equity fails under the proof the cause may be retained to a complete final decree on the remaining issues, although the latter present legal subjects only and the decree would cover only legal rights and grant none but legal remedies.²⁰

About thirty years later, the court attempted to enforce this standard by stating, "if any aspect of the case lay within [the chancery court's] subject matter jurisdiction, the chancery court ha[s] authority to hear and adjudge any non-chancery pure law claims via pendent jurisdiction."²¹ Only a year later the court emphasized this notion by stating that jurisdiction is to be determined from the face of a well-pleaded complaint, and if there is an independent basis for jurisdiction, the chancery court may hear any pendent legal claims.²² Despite the indication that a case need be grounded only in any aspect of equity, the court at times was persuaded to transfer a case to circuit court to avoid violating someone's "right to trial by jury."²³

Recently, the court has taken a stricter approach in addressing matters of jurisdiction in chancery court. In 1999, the court granted the movant's motion to transfer to circuit court "[a]lthough acts of fraud may give rise to actions in equity"²⁴ In that case, the court looked to the nature of the remedy sought, stating that such relief as actual and punitive damages are clearly legal remedies and not equitable in nature.²⁵ This view was affirmed when the court in a different case indicated that the request for an

19. Miss. CONST. art. 6, § 159.

20. *Shaw v. Owen*, 90 So. 2d 179, 181 (Miss. 1956).

21. *Johnson v. Hinds County*, 524 So. 2d 947, 953 (Miss. 1988).

22. *Tillotson v. Anders*, 551 So. 2d. 212, 213 (Miss. 1989).

23. *See id.* at 214; *Louisville & Nashville R.R. Co. v. Hasty*, 360 So. 2d 925, 927 (Miss. 1978).

24. *S. Leisure Homes, Inc. v. Hardin*, 742 So. 2d 1088, 1099 (Miss. 1999).

25. *Id.*

equitable remedy would not always invoke the subject matter jurisdiction of the chancery court.²⁶ The court decided that seeking the remedy of accounting coupled with monetary relief does not give the chancery court jurisdiction.²⁷

The jurisdiction of chancery courts was further limited when the Mississippi Supreme Court reversed a chancery judge's decision and ordered a case involving a minor seeking equitable remedies in the forms of a temporary restraining order, an accounting, and injunctive relief in three areas to be transferred to circuit court.²⁸ Despite the plaintiff's status as a minor and the equitable relief sought, the court in a five-to-four decision stated that all claims arising under the Tort Claims Act are to be heard exclusively in circuit court.²⁹ Justice McRae wrote a dissent emphasizing that once the chancery court has initial jurisdiction, it has pendent jurisdiction to hear all legal claims even if the equitable claims are disposed of before trial.³⁰

At times, the Mississippi Supreme Court has tended to overlook its past decisions and has decided such matters on a case-by-case basis. In *Poole v. Gwin, Lewis & Punches, LLP*, a law firm that had represented Poole in a property settlement brought suit in chancery court in an attempt to recover fees under a contingency fee arrangement with Poole.³¹ Although the case looked like a simple breach-of-contract case, the court stepped over the breach-of-contract issue by stating that the attorney-client relationship is a contract at will, and the discharge of a client's attorney is not a breach of contract.³² However, the facts do not indicate that the attorney was ever discharged.³³ They do state that Poole and the Drouet family entered into a settlement agreement, and when Poole was later committed to the Mississippi State Hospital,³⁴ the attorneys sought to collect their percentage of the settlement.³⁵

On interlocutory appeal, the court found that a contingency fee contract creates an equitable assignment under Mississippi law.³⁶ The court declined to accept the Fifth Circuit precedent³⁷ that decided that actions in quantum meruit are actions at law because they seek money damages.³⁸ Instead, it chose to follow the dissent in *Webb v. B.C. Rogers Poultry, Inc.*, noting that actions in quantum meruit are rooted in chancery court.³⁹

26. *Briggs & Stratton Corp. v. Smith*, 854 So. 2d 1045 (Miss. 2003).

27. *Id.* It is also worth noting that the Mississippi Supreme Court has basically done away with accounting by making it a discovery matter. See *City of Ridgeland v. Flowers*, 846 So. 2d 210, 214 (Miss. 2003); *Union Nat'l Life Ins. Co. v. Crosby*, 870 So. 2d 1175, 1180 (Miss. 2004).

28. *City of Ridgeland*, 846 So. 2d at 212.

29. *Id.* at 214.

30. *Id.* at 215.

31. *Poole v. Gwin, Lewis & Punches, LLP*, 792 So. 2d 987, 988-89 (Miss. 2001).

32. *Id.* at 989-90.

33. *Id.* at 989.

34. Mississippi State Hospital is the publicly funded psychiatric facility at Whitfield.

35. *Poole*, 792 So. 2d at 989.

36. *Id.* at 990.

37. *Webb v. B.C. Rogers Poultry, Inc.*, 174 F.3d 697, 704-05 (5th Cir. 1999).

38. *Poole*, 792 So. 2d at 991.

39. *Id.*

When Poole asserted her right to trial by jury, the court stated, “there is no right to trial by jury in chancery court. “The Constitution and the rules pertaining to jury trial have no effect in Chancery Court unless a particular statute requires a jury.”⁴⁰ Justice Mills, in his dissent, pointed out that the case was nothing other than a breach-of-contract case despite the attorney-client relationship, and he emphasized Poole’s right to trial by jury.⁴¹

Less than one year before *Crosby* was decided, the court, in *Re/Max Real Estate Partners, Inc. v. Lindsley*,⁴² held that the request for an accounting of funds arising out of a breach of contract was sufficient to sustain jurisdiction in chancery court.⁴³ Reverting back to the original standard, the court stated, “where there is in a case one issue of exclusive equity cognizance, such an issue can bring the entire case within [the] subject matter jurisdiction of [the] chancery court and that court may proceed to adjudicate all legal issues as well.”⁴⁴ The court further stated that to determine whether a claim for an accounting is equitable, one must see if discovery is needed, whether it is complicated, and whether a fiduciary duty exists.⁴⁵ The court denied the right to trial by jury in reliance on *Poole* and determined that the plaintiff’s right to choose his/her forum outweighed the right to trial by jury.⁴⁶ Despite only a single claim based in equity, the court decided that the chancery court had jurisdiction over the accounting claim and pendent jurisdiction over all other legal matters.⁴⁷ Four justices dissented. The dissenting opinion, written by Justice Waller, suggested that the mere request for accounting does not confer jurisdiction in chancery court.⁴⁸

Disputes over subject matter jurisdiction arose in two other cases where Judge Larry Buffington asserted chancery court jurisdiction. The first was a wrongful death action brought under the Tort Claims Act against Mississippi Municipal Liability Plan (MMLP).⁴⁹ Judge Buffington entered an opinion and order finding that MMLP coverage was for \$500,000 and not \$50,000.⁵⁰ On appeal to the Mississippi Supreme Court, MMLP asserted that the chancery court did not have jurisdiction to hear the case despite the fact that it had failed to raise the jurisdictional defect before the chancery court.⁵¹ The court recognized that when a party fails to raise an issue at the trial court level it is barred from raising that issue on

40. *Id.* at 990 (quoting BILLY G. BRIDGES & JAMES W. SHELSON, GRIFFITH’S MISSISSIPPI CHANCERY PRACTICE § 597, at 438 (2000)).

41. *Poole*, 792 So. 2d at 992.

42. *Re/Max Real Estate Partners, Inc. v. Lindsley*, 840 So. 2d 709 (Miss. 2003).

43. *Id.* at 714.

44. *Id.* at 712.

45. *Id.*

46. *Id.* at 713.

47. *Id.* at 714.

48. *Id.* at 714–15.

49. *Miss. Mun. Liab. Plan v. Jordan*, 863 So. 2d 934, 936 (Miss. 2003).

50. *Id.* at 937.

51. *Id.* at 940.

appeal, but if the chancery court has committed “plain error” and a substantial right is affected, then grounds exist to reverse the earlier decision.⁵²

The other case arose from a breach of contract between Copiah Medical Associates (Copiah) and Mississippi Baptist Health Systems (Baptist). Copiah filed an action in circuit court for damages and declaratory relief. Baptist then filed an action for specific performance in chancery court.⁵³ On interlocutory appeal, the Mississippi Supreme Court was to decide if Judge Buffington had correctly denied Copiah’s motion to transfer to circuit court.⁵⁴ The court decided that the denial to transfer was improper since specific performance of a lease contract could not be awarded by the chancery court due to the need for continual monitoring of the lease by the chancery court.⁵⁵ The court stated that the trial court must look to the substance of the claim over its form to determine if the claim is legal or equitable, and “if some doubt exists as to whether a complaint is legal or equitable in nature, that case is better tried in circuit court.”⁵⁶

IV. ANALYSIS

In light of *Crosby* and other recent cases, a standard for determining subject matter jurisdiction in chancery court in Mississippi has become very unclear and rather restrictive. The standard in *Shaw v. Owen*,⁵⁷ which stated that the chancery court had pendent jurisdiction over all other claims once it took jurisdiction based on one ground of equity, is clearly not operative today.⁵⁸ Also, cases that required only an equitable jurisdictional basis from the face of a well-pleaded complaint do not seem applicable.

Recently, the court has increasingly taken a “substance over form” approach to determining whether a claim and the relief sought are legal or equitable.⁵⁹ This subjective approach requires the chancellor to view the complaint from the plaintiff’s perspective and determine whether the claim and remedy sought are *really* equitable or legal in nature. Such a “substance over form” approach makes one wonder whether the tobacco litigation in chancery court was *really* about enjoining the tobacco manufacturers or about the billions of dollars sought to reimburse the Medicaid funds.⁶⁰ Was the litigation in *Poole*⁶¹ *really* an action for an equitable assignment and quantum meruit or an action for damages for breach of contract? After all, “if some doubt exists as to whether a complaint is

52. *Id.* at 940–41.

53. *Copiah Med. Assocs. v. Miss. Baptist Health Sys.*, 898 So. 2d 656, 659 (Miss. 2005).

54. *Id.* at 660.

55. *Id.* at 660–61.

56. *Id.* at 661.

57. *Shaw v. Owen*, 90 So. 2d 179 (Miss. 1956).

58. *Crosby* involved two claims and three remedies based in equity.

59. *Copiah Med. Assocs. v. Miss. Baptist Health Sys.*, 898 So. 2d 656, 661 (Miss. 2005). *See also* *Union Nat’l Life Ins. Co. v. Crosby*, 870 So. 2d 1175, 1182 (Miss. 2004). (The court stated that it should take a realistic and pragmatic review of the complaint.)

60. *See In re Corr-Williams Tobacco Co.*, 691 So. 2d 424 (Miss. 1997).

61. *Poole v. Gwin, Lewis & PUNCHES, LLP*, 792 So. 2d 987 (Miss. 2001).

legal or equitable in nature, that case is better tried in circuit court”⁶² and “a breach of contract claim . . . is best heard in circuit court.”⁶³

The *Crosby* opinion was written less than one year after *Lindsley*, but the two are hardly reconcilable. *Lindsley* involved only one equitable claim⁶⁴ while *Crosby* involved five.⁶⁵ The two distinctly different opinions may be a result of the absence of Justice McRae in the *Crosby* decision. Since *Lindsley* was a five-to-four opinion, the result would probably not be the same today with the additions of Justices Dickinson and Carlson to the court. However, the difference might also have overtones of the possible frustrations the court has had with the exercise of jurisdiction. Judge Buffington has asserted in the past.⁶⁶

The Mississippi Supreme Court’s approach to the issue leads one to believe that the standard is (1) to look to where the complaint “arises from,”⁶⁷ (2) to determine if the claim or remedies sought are predominately equitable,⁶⁸ and (3) if doubt exists, “[i]t is more appropriate for a circuit court to hear equity claims than it is for a chancery court to hear actions at law.”⁶⁹ The results of such a standard reach far beyond the outcome in each case decided. The decisions indicate an erosion of pendent jurisdiction in chancery court, a limit on the venues among which plaintiffs may choose, and a merging of the chancery and circuit courts in Mississippi.

Since the Mississippi Supreme Court is abandoning the notion that if the chancery court exercises jurisdiction based on one ground of equity then the court may hear all associated legal claims, pendent jurisdiction in chancery court has been extremely limited. This particularly infringes upon the plaintiff’s right to choose the forum.⁷⁰ If a plaintiff were allowed to bring only his equitable claims in chancery court and his legal claims in circuit court, then limiting the pendent jurisdiction of chancery courts would not be a problem. However, this option is not available due to the doctrine of *res judicata*.⁷¹ The doctrine bars the litigation of two claims if the two actions involve similar subject matter, the facts are similar, the parties are the same, and the quality or character of the person whom the claim is against is the same.⁷² Between this doctrine and the Mississippi Supreme Court’s recent decisions, the pendent jurisdiction of chancery courts has deteriorated.

62. *Copiah Med. Assocs.*, 898 So. 2d at 661.

63. *S. Leisure Homes, Inc. v. Hardin*, 742 So. 2d 1088, 1090 (Miss. 1999).

64. *Re/Max Real Estate Partners, Inc. v. Lindsley*, 840 So. 2d 709 (Miss. 2003).

65. *Union Nat’l Life Ins. Co. v. Crosby*, 870 So. 2d 1175, 1178–79 (Miss. 2004).

66. *See* *Miss. Mun. Liab. Plan v. Jordan*, 863 So. 2d 934, 934 (Miss. 2003); *Copiah Med. Assocs.*, 898 So. 2d at 656.

67. *Crosby*, 870 So. 2d at 1182.

68. *See id.* (The court addressed each claim and remedy separately and determined whether there was more legal or equitable weight).

69. *Id.* at 1182 (quoting *S. Leisure Homes, Inc. v. Hardin*, 742 So. 2d 1088, 1090 (Miss. 1999)).

70. *See* *New Orleans & Ne. R.R. Co. v. Gable*, 172 So. 2d 421 (Miss. 1965).

71. *See* *AETNA v. Berry*, 669 So. 2d 56 (Miss. 1996).

72. *Id.* at 67.

Over the past few years, Mississippi has limited the forums in which plaintiffs may bring their cases. Recently Mississippi amended the comments to Rule 20 of the Mississippi Rules of Civil Procedure, which now allows joinder only when the “transaction or occurrence” is a “distinct litigable event.”⁷³ The new joinder rule is narrower than the previous one. It limits who can be sued and where plaintiffs may bring suit. The federal courts already had this narrower rule in place,⁷⁴ forcing plaintiffs to bring such actions in two different systems. Now a plaintiff who seeks equitable relief coupled with legal relief has a much greater burden convincing a chancellor, or the Mississippi Supreme Court, that the chancery court has jurisdiction to hear the claims.

As of 1995, only four states still had separate courts of equity: Mississippi, Arkansas, Delaware, and Tennessee.⁷⁵ However, in 2001, Arkansas passed Amendment 80 to its constitution, which eliminated chancery courts throughout the state.⁷⁶ Arkansas completely merged the two court systems and created divisions within the circuit courts to distribute the caseload accordingly.⁷⁷ Mississippi remains one of three states that still have separate courts of equity. Mississippi does not need to merge the courts, but it should consider eliminating the constitutional provision that allows the chancery court to hear “all matters in equity.”⁷⁸ Such an amendment would limit the chancery court’s jurisdiction to basically domestic issues. The amendment would eliminate all the litigation over the jurisdiction of the courts and the interlocutory appeals to Mississippi Supreme Court. Placing all these cases in circuit court guarantees all litigants a right to trial by jury and shields parties from overreaching chancellors.

V. CONCLUSION

The standard that the Mississippi Supreme Court uses to determine the jurisdiction of the chancery courts is very cloudy and inconsistently applied. Recently, the court’s application of the law has severely limited the chancery court’s jurisdiction and deteriorated the court’s pendent jurisdiction to hear all other claims. Because of this and the other changes to the law in Mississippi, a plaintiff’s choice of forum is continually being restricted. In light of the recent opinions, it may be time for the state and the judicial system to consider an amendment that would simply defer all matters of equity to circuit courts and retain the chancery courts as family courts or divorce courts.

73. MISS. R. CIV. P. 20, cmt. (2004).

74. FED. R. CIV. P. 20 (2005).

75. Morton Gitelman, *The Separation of Law and Equity and the Arkansas Chancery Courts: Historical Anomalies and Political Realities*, 17 U. ARK. LITTLE ROCK L.J. 215, 244 (1995).

76. ARK. CONST. amend. 80 (2001).

77. Larry Brady & J.D. Gingerich, *A Practitioner’s Guide to Arkansas’s New Judicial Article*, 24 U. ARK. LITTLE ROCK L. REV. 715, 719–20 (2002).

78. MISS. CONST. art. 6, § 159.