

3-13-97

IN THE SUPREME COURT OF MISSISSIPPI
NO. 96-M-00115-SCT
IN RE: CORR-WILLIAMS TOBACCO COMPANY,
LAUREL CIGAR & TOBACCO COMPANY,
LONG WHOLESALE, INCORPORATED,
WIGLEY & CULP, INC. OF GULFPORT, MISSISSIPPI,
THE LEWIS BEAR COMPANY,
GENERIC PRODUCTS CORPORATION,
THE AMERICAN TOBACCO COMPANY,
R. J. REYNOLDS TOBACCO COMPANY,
BROWN AND WILLIAMSON TOBACCO CORPORATION,
PHILIP MORRIS INCORPORATED, LIGGETT GROUP, INC.,
LORILLARD TOBACCO COMPANY,
THE COUNCIL FOR TOBACCO RESEARCH,
HILL & KNOWLTON, INC., AND THE TOBACCO INSTITUTE, INC.
EN BANC.

SMITH, JUSTICE, FOR THE COURT:

Petitioners, defendants in a law suit pending in the Jackson County Chancery Court, request that this Court, pursuant to M.R.A.P. 21, grant extraordinary relief by reversing certain interlocutory decisions of the chancery court. After thorough consideration of the pleadings and the arguments of both parties, we find that there is no sufficient legal reason that this Court intervene and accept jurisdiction of this case at this time. Accordingly, we dismiss the petition and the supplemental petition.

STATEMENT OF FACTS

On February 20, 1996, Corr-Williams Tobacco Company and numerous other companies and entities ("Petitioners"), defendants in Cause No. 94-1429 in the Chancery Court of Jackson County, filed the instant Petition for Writ of Prohibition and/or Mandamus with this Court.

A brief history of the events in the Chancery Court of Jackson County is helpful. On October 4, 1994, Petitioners filed a Motion for Judgment on the Pleadings, challenging the sufficiency of claims made by the Respondent in the complaint. On February 21, 1995, the chancellor denied this motion by order.

On June 12, 1995, Petitioners filed a motion for partial summary judgment wherein they argued that the Attorney General ("Respondent") did not have the authority to sue for the recovery of Medicaid expenditures without the approval, and over the express disapproval, of the Governor or the Division of Medicaid. A hearing was held in chancery court on June 27, 1995. Chancellor Myers took the matter under advisement and entered an order on August 25, 1995, denying the motion without explanation.

On June 10, 1996, Petitioners filed their Supplemental Petition for Writ of Prohibition and/or Mandamus with this Court, discussing certain findings of fact and conclusions of law made by Chancellor Myers in Cause No. 94-1429, filed March 6, 1996, which provided the reasoning behind his August 25, 1995 order denying the motion for partial summary judgment. Petitioners do not seek additional relief in their supplemental petition.

Aggrieved by the decisions of Chancellor Myers, the Petitioners now seek a Writ of Prohibition and/or Mandamus ordering Chancellor Myers to dismiss those portions of Cause No. 94-1429 that seek recovery of Medicaid funds.

DISCUSSION OF LAW

WHETHER THE ATTORNEY GENERAL POSSESSES THE AUTHORITY TO SUE FOR THE RECOVERY OF MEDICAID FUNDS INDEPENDENT OF THE MEDICAID LAWS AND WITHOUT THE APPROVAL OF THE GOVERNOR AND THE MISSISSIPPI DIVISION OF MEDICAID WHEN THE LEGISLATURE HAS EXPLICITLY DETERMINED THAT THE GOVERNOR HAS EXCLUSIVE AUTHORITY OVER SUCH SUITS.

The Petitioners argue that this Court should take jurisdiction of this matter and decide the issue presented for several reasons. Specifically, the Petitioners argue that: (1) other adequate means of relief are unavailable; (2) deciding this question now would promote judicial efficiency and economy; (3) immediate review would be in the public interest; and (4) Petitioners have a clear right to the relief sought. We now address each of the arguments made by the Petitioners.

Petitioners argue that this Court should correct "clear errors of law" by the chancery court at this point in the proceedings. In support of their position, Petitioners rely on this Court's opinion in *In re McMillin*, 642 So. 2d 1336 (Miss. 1994). *McMillin* involved statewide elections which were enjoined two weeks before the election date, and conflicting decisions from different chancellors on whether the elections could proceed. In *McMillin*, this Court addressed the matter and granted the Petition therefore dissolving the preliminary injunction issued by the chancery court. However, we did so due to the "conflicting orders from co-equal courts and the overriding public importance of the issue." *Id.* at 1338. Moreover, in *McMillin*, this Court found that the chancery court lacked jurisdiction to issue the preliminary injunction because "chancery courts in this state do not have the jurisdiction to enjoin elections or to otherwise interfere with political and electoral matters which are not within the traditional reach of equity jurisdiction." *Id.* at 1339.

Unlike *McMillin*, the case *sub judice* involves one lawsuit which has been proceeding in one court since May 1994. Moreover, there has been no showing that the chancery court lacked jurisdiction or made clear errors of law. The exigent circumstances presented to this Court in *McMillin* are simply not present in the case *sub judice*.

Petitioners also argue that the instant situation cannot be remedied on appeal if this Court does not grant the requested relief. Petitioners rely on *State v. Maples*, 402 So. 2d 350, 352 (Miss. 1981), where this Court held that "a writ [of prohibition] may issue as an aid to the appellate process by superior courts to

inferior courts to prevent action by an inferior court or judge which cannot be remedied on appeal." In *Maples*, this Court held that a circuit judge's refusal to recuse himself in a criminal case upon motion of the State presented a unique situation where the State would be without an adequate remedy on appeal. Specifically, we held "if the trial judge has erroneously refused to vacate the bench and there is a verdict of acquittal or a directed verdict, the defendant in the criminal case may not be tried again because of the double jeopardy provisions of the Constitutions of the United States and the State of Mississippi." *Id.* at 353.

In the case *sub judice*, we are not faced with a situation involving either constitutional issues or the lack of an adequate remedy either through the trial or appellate process. Petitioners have failed to demonstrate the inability to have any error, assuming error does occur, corrected on appeal. Therefore, Petitioners' argument that an adequate remedy on appeal is unavailable is simply without merit.

Petitioner next alleges that this Court should intervene in the instant matter in order to simplify, shorten or eliminate proceedings in the chancery court. Petitioners rely on *State v. Caldwell*, 492 So. 2d 575, 577 (Miss. 1986), where this Court granted a change of venue in a capital case in order "to promote judicial efficiency and economy." Again, in *Caldwell*, we were faced with particular facts and circumstances which involved constitutional issues. Specifically, *Caldwell* involved the "right of a defendant to a public trial by an impartial jury of the county where the offense was committed." *Id.* at 577. Moreover, we limited our holding in *Caldwell* to "the particular facts of that case which required that Caldwell be allowed to reassert his constitutional right." *Id.*

The Petitioners simply have not presented circumstances equivalent to those presented either in *Maples* or *Caldwell* which would warrant our intervention at this time. As a result, we find that judicial efficiency and economy will be best achieved by an orderly procession of this matter through the chancery court and the appellate process, if necessary. Petitioners also argue that the interest of the public requires this Court to immediately decide the issue presented due to the conflict between state officials. While we acknowledge the obvious conflict between two state officials, this Court finds that the public interest would be better served by the procession of this case to its conclusion in the appropriate forum. At this time, the appropriate forum to handle the presentation of witnesses and make findings of fact, if necessary, would be the Chancery Court of Jackson County.

Petitioners conclude that they are entitled to mandamus because they have shown "[a] clear right . . . to the relief sought." Petitioners rely on *Bd. of Supervisors v. Mississippi State Highway Comm'n*, 207 Miss. 839, 847, 42 So. 2d 802, 805 (1949). However, the writ in that case was not sought in this Court. Moreover, this Court clearly held that "[t]he writ of mandamus is a discretionary writ and even in a case where an absolute legal right is shown, the writ will be withheld whenever the public interest would be adversely affected." Because the Petitioners have an adequate remedy through the trial process in the chancery court, we decline to intervene and accept jurisdiction at this time. We also take this opportunity to state that the Petitioners' attempt to attack interlocutory decisions made many months ago weighs heavily against them. The definitive issue of who has the authority and the right to file such a suit, the Governor or the Attorney General, is an issue which may adequately be decided by this Court on appeal on the merits. Therefore, it is ordered that the Petition for Writ of Prohibition and/or Mandamus and Supplemental Petition for Writ of Prohibition and/or Mandamus filed by Petitioners be

dismissed.

PETITION FOR AN EXTRAORDINARY WRIT OF PROHIBITION DISMISSED.

**PRATHER AND SULLIVAN, P.JJ., PITTMAN, BANKS AND ROBERTS, JJ., CONCUR.
DAN LEE, C.J., DISSENTS WITH SEPARATE WRITTEN OPINION. McRAE AND
MILLS, JJ., NOT PARTICIPATING.**