

FILED
FEB 22 2024

**IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI**

EDDIE JEAN CARR, CHANCERY CLERK
BY Shadrack D.C.
PETITIONER

**LYNN FITCH, IN HER OFFICIAL
CAPACITY AS ATTORNEY GENERAL
FOR THE STATE OF MISSISSIPPI**

VS.

CAUSE NUMBER

2024-174
RESPONDENT

**SHADRACK TUCKER WHITE,
IN HIS OFFICIAL CAPACITY AS
STATE AUDITOR, MISSISSIPPI OFFICE
OF THE STATE AUDITOR**

PETITION FOR DECLARATORY JUDGMENT

Lynn Fitch, in her official capacity as Attorney General of the State of Mississippi ("General Fitch" or "Attorney General"), petitions this Court for a declaratory judgment pursuant to MISS. R. CIV. P. 57 against Shadrack Tucker White, in his official capacity as State Auditor ("Auditor White").

INTRODUCTION

1. The Attorney General is entitled to a judgment pursuant to MISS. R. CIV. P. 57 declaring that:

(a) The Attorney General has the sole authority to manage litigation and prosecute suits under MISS. CODE ANN. §§ 7-5-1 and 7-7-211(g);

(b) Auditor White lacks authority to prosecute suits and manage litigation pursuant to MISS. CODE ANN. § 7-7-211(g) once he has instituted suit by referring a case for prosecution to the Attorney General;

(c) Auditor White exceeded his authority under MISS. CODE ANN. § 7-7-211(g) by prosecuting a suit in Hinds County Circuit Court against Brett Lorenzo Favre (“Favre”), Favre Enterprises, Inc., and Robert Culumber contained in a counterclaim and amended counterclaim filed in *Brett Lorenzo Favre v. Shadrack Tucker White*, in the Circuit Court of Hinds County, Mississippi, Civil Action No. 23-95-DHG (collectively as the “Counterclaim”);

(d) Auditor White encroached on the statutory authority vested in the Attorney General to manage litigation and prosecute suits under MISS. CODE ANN. §§ 7-5-1 and 7-7-211(g) by prosecuting the Counterclaim without lawful authority; and

(e) The Attorney General has not declined prosecution as to any outstanding sums owed by Favre, Favre Enterprises, Inc., and Robert Culumber pursuant to MISS. CODE ANN. § 7-7-211(g) and MISS. CODE ANN. § 7-5-39 does not apply.

2. On May 9, 2022, the Attorney General, on behalf of the State and through the Department of Human Services (“MDHS”), filed suit against a number of defendants, including Brett Favre (“Favre”), in Hinds County Circuit Court to recover TANF funds.¹ *See Mississippi Department of Human Services v. Mississippi Community Education Center, Inc., et al.*, 22-cv-286-EFP (“TANF Litigation”) [Doc. 2].

3. By seeking declaratory relief herein, General Fitch does not waive the statutory right to prosecute an additional suit against Favre, Favre Enterprises, Inc.,

¹ “TANF” refers to the Temporary Assistance for Needy Families program.

and Robert Culumber for the use and benefit of MDHS pursuant to MISS. CODE ANN. § 7-7-211(g). General Fitch expressly reserves all rights to prosecute such suit pursuant to MISS. CODE ANN. § 7-7-211(g).

PARTIES

4. General Fitch is the Attorney General for the State of Mississippi whose principal place of business is in Jackson, Hinds County, Mississippi. General Fitch petitions this Court solely in her official capacity as the Attorney General of the State of Mississippi.

5. Auditor White is the State Auditor, Mississippi Office of the State Auditor, whose principal place of business is in Jackson, Hinds County, Mississippi. Auditor White is being sued solely in his official capacity as State Auditor. He may be served with process pursuant to the Mississippi Rules of Civil Procedure.

JURISDICTION

6. This Petition raises claims solely under the laws of the State of Mississippi. This case presents this Court with important questions regarding the constitutional, common law, and statutory duties of the Attorney General and the State Auditor. The relief sought arises in equity and subject matter jurisdiction is vested in the Chancery Court. MISS. CONST. art. VI, §159(a).

VENUE

7. Venue is proper in this Court because Auditor White may be found in Hinds County, Mississippi. *See* MISS. CODE ANN. §11-5-1.

LAW AND FACTS

8. This case presents a case or controversy under MISS. R. CIV. P. 57 due to the actions of Auditor White that encroached on the exclusive authority vested in the Attorney General by virtue of the Mississippi Constitution, the common law, and pursuant to MISS. CODE ANN. §§ 7-5-1 and 7-7-211(g).

9. This Court is authorized to grant declaratory relief pursuant to MISS. R. CIV. P. 57 (“Courts . . . within their respective jurisdiction may declare rights, status, and other legal relations regardless of whether further relief is or could be claimed”).

10. A declaratory judgment is appropriate because the relief sought by the Attorney General would result in a judgment that will terminate the controversy that is capable of repetition yet subject to evading review unless the relief sought here is granted. Declaratory judgment is appropriate to declare the proper constitutional, common law, statutory, legal powers, rights, status and relations of the parties.

11. MISS. CODE ANN. §7-7-211(g), provides in part that the Auditor shall,

[M]ake written demand, when necessary, for the recovery of any amounts representing public funds improperly withheld, misappropriated and/or otherwise illegally expended by an officer, employee or administrative body of any state, county or other public office, and/or for the recovery of the value of any public property disposed of in an unlawful manner. . . .

In the event, however, such person or persons or such surety shall refuse, neglect or otherwise fail to pay the amount demanded and the interest due thereon within the allotted thirty (30) days, the State Auditor shall have the authority and it shall be his duty to institute suit, and the Attorney General shall prosecute the same in any court of the state to the end that there shall be recovered the total of such amounts from the person or persons and surety on official bond named therein[.] [Emphasis added].

12. The Attorney General is a constitutional officer. *Bell v. State*, 678 So. 2d 994, 996 (Miss. 1996); *State ex rel. Patterson v. Warren*, 180 So. 2d 293, 306 (Miss. 1965). The Attorney General is empowered by state law granting her the power of an Attorney General at common law. *Hood ex rel. Mississippi v. Microsoft Corporation*, 428 F. Supp. 2d 537, 544-45 (S.D. Miss. 2006).

13. MISS. CODE ANN. § 7-5-1 provides, in relevant part, that the Attorney General “shall have the powers of the Attorney General at common law and, except as otherwise provided by law, is given the sole power to bring or defend a lawsuit on behalf of a state agency, the subject matter of which is of statewide interest.” *Id.* (Emphasis supplied). At common law, the Mississippi Attorney General had the “power and authority . . . to institute, conduct and maintain all suits necessary for the enforcement of the laws of the State, preservation of order and the protection of public rights.” *Mississippi ex rel Hood v. AU Optronics Corp.*, 876 F. Supp. 2d 758, 774 (S.D. Miss. 2012) (quoting *Hood v. Astrazeneca Pharm., LP*, 744 F. Supp. 2d 590, 595 (N.D. Miss. 2010)) (internal quotation marks omitted).

14. The Mississippi Supreme Court has confirmed that the Attorney General has the same powers and duties that were vested in her at common law. *See Warren*, 180 So. 2d at 299; *Kennington–Saenger Theatres v. State ex rel. Dist. Attorney*, 196 Miss. 841, 18 So.2d 483, 486 (1944).

At common law the duties of the attorney general, as chief law officer of a realm, were numerous and varied. He was chief legal adviser of the crown, was entrusted with the management of all legal affairs, and prosecution of all suits, criminal and civil, in which the crown was interested. He had authority to institute proceedings to abate public

nuisances, affecting public safety and convenience [*sic*], to control and manage all litigation on behalf of the state, and to intervene in all actions which were of concern to the general public.

Warren, 180 So. 2d at 299.

15. On October 12, 2021, Auditor White issued a written demand (“Demand Letter”) to Favre, Favre Enterprises, Inc., and Robert L. Culumber (“Favre Demand”) in the amount of \$828,000.00 pursuant to MISS. CODE ANN. §7-7-211(g). *See Exhibit A*. This Demand Letter states that the “demand is made for the use and benefit of the Mississippi Department of Human Services.” *Id.* The total demand represented \$600,000.00 in principal and \$228,000.00 in interest calculated at one percent (1%) per month from July 30, 2018. After receiving this demand, Favre paid \$600,000.

16. On November 15, 2021, pursuant to MISS. CODE ANN. §7-7-211(g), Auditor White instituted suit by referring the balance of the interest of the Favre Demand in the amount of \$228,000 to the Attorney General for her to prosecute.²

17. On May 9, 2022, the Attorney General on behalf of the State through the MDHS filed suit against a number of defendants, including Favre, to recover TANF funds. As part of the TANF complaint, MDHS sought \$1.1 million from Favre which included the amount sought by Auditor White in the October 12, 2021, Favre Demand and referred to the Attorney General on November 15, 2021. *See TANF Litigation*, [Doc. 2], ¶¶ 137-138.

² Favre previously paid \$500,000 to the Auditor on May 7, 2020. *See infra* ¶ 24, Amended Counterclaim, [Doc 46] at ¶ 145. This sum was not included in the Favre Demand issued by the Auditor on October 12, 2021. The Counterclaim and Amended Counterclaim appear to use the \$500,000 to calculate the accrual of interest under MISS. CODE ANN. § 7-7-211(g).

18. The claim against Favre in the TANF Litigation did not include the \$228,000 in interest contained in the October 12, 2021, Favre Demand because that interest claim is reserved for suit under MISS. CODE ANN. § 7-7-211(g). Any suit to recover this amount must be prosecuted by the Attorney General on behalf of MDHS and the interest collected must be paid to MDHS. The Attorney General has never declined to prosecute the suit to recover outstanding interest in the Favre Demand, and she reserves all rights to prosecute an additional suit and manage the litigation with respect thereto on behalf of the State pursuant to MISS. CODE ANN. §§ 7-5-1 and 7-11-211(g).

19. On December 13, 2022, MDHS filed an Amended Complaint in the TANF Litigation seeking \$7.1 million from Favre. *See TANF Litigation*, [Doc. 197]. The Amended Complaint did not seek the \$1.1 million from Favre because he had, by that time, repaid \$1.1 million. *See id.*, Amended Complaint, [Doc. 197], ¶ 105]. The TANF Litigation is ongoing, and the Hinds County Circuit Court denied Favre's motion to dismiss. *Id.* [Doc 352]. The Mississippi Supreme Court denied Favre's petition for interlocutory appeal on the motion to dismiss. *Id.* [Doc. 424].

20. On February 9, 2023, Favre sued Auditor White in Hinds County Circuit Court in his individual capacity for defamation in connection with statements allegedly made by Auditor White as part of the State's ongoing litigation to recoup TANF funds. *See Favre v. White*, Circuit Court of Hinds County, Mississippi, Civil Action No. 23-95-DHG [Doc 2], ¶ 8 (the "Defamation Suit").

21. In the Defamation Suit, Favre identified three purportedly defamatory statements that Auditor White allegedly made about him. *See Defamation Suit*, [Doc. 2]. All three alleged statements by Auditor White were made to media outlets and were directly related to his official duties as State Auditor. General Fitch believed then, and still believes today, that public officials should not face retribution in court for communicating with constituents about their official duties through social media and media outlets.

22. Consistent with the discretion afforded her by MISS. CODE ANN. § 7-5-43, General Fitch represented Auditor White in the Defamation Suit in his individual capacity. *See Defamation Suit*, [Doc 2], ¶ 8.³ During the course of that representation, Auditor White created a non-waivable conflict of interest impeding the Attorney General's ability to further discharge her duties as his counsel in that case.⁴

³ Section 7-5-43 provides in pertinent part, that:

(1) In addition to all power and authority vested in the attorney general of the state of Mississippi by its constitution and statutes and all common law power and authority which may be invested in or exercised by such attorney general as such, the attorney general . . . and his assistants and representatives are hereby authorized upon request made of him to, in his discretion, render such services as the attorney general may deem necessary to assist in advising and in representing, either or both, all officers or employees . . . of the state of Mississippi, . . . should they or any of them . . . be sued in an action at law or in equity, . . . as a result of the discharge . . . of their official duties under the constitution and other laws of the state of Mississippi, or growing out of such official action or nonaction, as the case may be. . . .

⁴ Pursuant to MISS. R. PROF. CONDUCT 1.7(b)(1), “[a] lawyer shall not represent a client if the representation of that client may be materially limited . . . by the lawyer’s own interests unless the lawyer reasonably believes . . . the representation will not be adversely affected.” *Id.*

23. Solely due to the non-waivable conflict, General Fitch filed a motion to withdraw as Auditor White's counsel from the Defamation Suit on January 5, 2024. *See Defamation Suit*, [Doc. 33]. On February 2, 2024, the Circuit Court granted the Attorney General's motion to withdraw as his counsel. *Id.* [Dkt. 43].

24. On February 5, 2024, in the Defamation Suit, Auditor White filed the Counterclaim against Favre, Favre Enterprises, Inc., and Robert Culumber based on the October 12, 2021, Favre Demand under MISS. CODE ANN. § 7-11-211(g). *Id.* [Doc. 44]. On February 6, 2024, Auditor White filed an Amended Counterclaim. *Id.* [Doc. 46].

25. The Counterclaim seeks to recover on the same demand Auditor White issued on October 12, 2021 under MISS. CODE ANN. § 7-7-211(g) (the Favre Demand) and referred to the Attorney General for prosecution on November 15, 2021.

26. In filing the Counterclaim, Auditor White asserts that he has the sole authority to prosecute the Favre Demand under MISS. CODE ANN. § 7-7-211(g). *See Defamation Suit*, [Doc. 46], p.1. Auditor White maintains that he now has this authority because General Fitch withdrew from representing him in the Defamation Suit. Auditor White issued a written statement at the time he filed the Counterclaim and gave an interview to a television news outlet confirming his position. *See* <https://www2.osa.ms.gov/news/state-auditor-counter-sues-favre-for-tanf-funds/>; <https://www.wlox.com/video/2024/02/11/state-auditor-shad-white-counter-sues-brett-favre-misspent-welfare-dollars/> (see time: 0:45 – 1:05) (last accessed 2/22/24).

27. Auditor White misreads the law, and his Counterclaim in the Defamation Suit encroaches on the statutory authority vested in the Attorney General to manage litigation and prosecute suits under MISS. CODE ANN. §§ 7-5-1 and 7-7-211(g).

28. By filing the Counterclaim, Auditor White mistakenly conflates the Attorney General's discretionary authority to represent him in his individual capacity in the Defamation Suit under MISS. CODE ANN. § 7-5-43 with her sole authority to manage litigation and prosecute suits under MISS. CODE ANN. §§ 7-5-1 and 7-7-211(g). By withdrawing as Auditor White's counsel in his individual capacity in the Defamation Suit, the Attorney General did not relinquish her sole authority to prosecute the Favre Demand or any other suit under MISS. CODE ANN. § 7-7-211(g).

29. The Attorney General's withdrawal from discretionary representation of Auditor White in the Defamation Suit was limited to that case and was required because of a conflict that he created. The Attorney General's withdrawal from her discretionary representation in the Defamation Suit does not permit Auditor White to encroach upon the authority otherwise vested in the Attorney General under MISS. CODE ANN. §§ 7-5-1 and 7-7-211(g).

30. Auditor White lacks statutory authority to prosecute suits pursuant to MISS. CODE ANN. § 7-7-211(g). At no time has the Attorney General declined to prosecute the Favre Demand under MISS. CODE ANN. § 7-7-211(g), and MISS. CODE ANN. § 7-5-39 does not apply.

31. The Attorney General's withdrawal from representing Auditor White in his individual capacity in the Defamation Suit pursuant to MISS. CODE ANN. § 7-5-43 does not authorize him, *sua sponte*, to prosecute the Counterclaim pursuant to MISS. CODE ANN. § 7-7-211(g).

32. The Attorney General's withdrawal from representing Auditor White in his individual capacity in the Defamation Suit pursuant to MISS. CODE ANN. § 7-5-43 does not constitute a declination to prosecute the Favre Demand under MISS. CODE ANN. § 7-7-211(g).

33. Auditor White's Counterclaim violates the authority vested in the Attorney General under MISS. CODE ANN. §§7-5-1, and 7-7-211(g), and usurps the authority vested solely in the Attorney General to prosecute such suit.

CLAIM

COUNT I DECLARATORY RELIEF

34. General Fitch reasserts and realleges the preceding paragraphs as if fully set forth herein.

35. The Attorney General is entitled to a declaratory judgment pursuant to MISS. R. CIV. P. 57 that:

(a) The Attorney General has the exclusive statutory authority to prosecute suits and manage litigation under MISS. CODE ANN. §§ 7-5-1 and 7-7-211(g);

(b) Auditor White lacks statutory authority to prosecute suits and manage litigation pursuant to MISS. CODE ANN. § 7-7-211(g);

(c) Auditor White exceeded his statutory authority under MISS. CODE ANN. § 7-7-211(g) by prosecuting the Counterclaim without lawful authority;

(d) Auditor White encroached upon the authority vested in the Attorney General pursuant to MISS. CODE ANN. § 7-5-1 by prosecuting the Counterclaim without lawful authority; and

(e) Auditor White encroached upon the exclusive statutory authority vested in the Attorney General to prosecute suits pursuant to MISS. CODE ANN. § 7-7-211(g), by prosecuting the Counterclaim without lawful authority.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, General Fitch respectfully requests that this Court:

(1) Enter a judgment in her favor declaring that:

(a) The Attorney General has the sole authority to manage litigation and prosecute suits under MISS. CODE ANN. §§ 7-5-1 and 7-7-211(g);

(b) Auditor White lacks authority to prosecute suits and manage litigation pursuant to MISS. CODE ANN. § 7-7-211(g) once he has instituted suit by referring a case for prosecution to the Attorney General;

(c) Auditor White exceeded his authority under MISS. CODE ANN. § 7-7-211(g) by prosecuting a suit in Hinds County Circuit in *Brett Lorenzo Favre v. Shadrack Tucker White*, in the Circuit Court of Hinds County, Mississippi, Civil Action No. 23-95-DHG;

(d) Auditor White encroached on the statutory authority vested in the Attorney General to manage litigation and prosecute suits under MISS. CODE ANN. §§ 7-5-1 and 7-7-211(g) by prosecuting the Counterclaim without lawful authority; and

(e) The Attorney General has not declined prosecution as to any outstanding sums owned by Favre, Favre Enterprises, Inc., and Robert Culumber pursuant to MISS. CODE ANN. § 7-7-211(g) and MISS. CODE ANN. § 7-5-39 does not apply.

(2) Grant such other and further relief as this Court may deem proper.

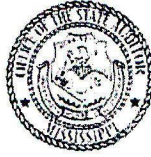
THIS the 22nd day of February, 2024.

Respectfully submitted,

LYNN FITCH, ATTORNEY GENERAL
STATE OF MISSISSIPPI

By: 
GERALD L. KUCIA (MSB #8716)
Special Assistant Attorney General

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STATE OF MISSISSIPPI
OFFICE OF THE STATE AUDITOR
SHAD WHITE
STATE AUDITOR

October 12, 2021

Favre Enterprises, Inc.
c/o Robert L. Culumber
2300 20Th St.
Gulfport, MS 39501

Robert L. Culumber
2300 20Th St.
Gulfport, MS 39501

Brett Favre
c/o James A. Cook Jr.
1 Willow Bend Drive
Hattiesburg, MS 39402

Sirs:

After thorough investigation, I am required by Miss. Code §7-7-211, to demand you make payment, as directed below, in the amount of \$828,000.00. An itemized statement is enclosed.

Investigative audits which support this demand were completed by the Financial and Compliance Audit Division of the Mississippi Office of the State Auditor in its Single Audit and a forensic audit conducted on behalf of the Mississippi Department of Human Services. Both audits are available to view on the www.osa.ms.gov.

The sum demanded represents illegal expenditures of public funds made to you or to entities or combines for which you are legally obligated to pay and/or the unlawful dispositions of public property, including public funds, made with you or with entities or combines for which you are legally responsible to pay. These illegal expenditures and unlawful dispositions were made when you knew or had reason to know through the exercise of reasonable diligence that the expenditures were illegal and/or the dispositions were unlawful.

This demand is made for the use and benefit of the Mississippi Department of Human Services. The amount demanded includes public funds which were improperly misappropriated and/or otherwise illegally expended and unlawful dispositions of other public property. These expenditures and dispositions were in violation of the applicable provisions of the Mississippi Constitution, the applicable laws and regulations of the State of Mississippi, the applicable



federal laws and regulations, and the contractual and other legal and equitable rights of the Mississippi Department of Human Services.

If you fail to pay this demand in full within thirty (30) days, I must perform my duty, pursuant to Miss. Code §7-7-211, to institute suit against you, and the Attorney General of Mississippi shall file the necessary civil lawsuit in the proper court. Please be aware that after thirty (30) days interest will again begin accruing at one percent (1%) per month until the demand is paid in full.

Please refer to case number 25-20-9659 when corresponding with this office concerning this case. Your certified funds payment should be payable to "State Department of Audit Exception Clearing Account" and should be addressed to the attention of Sarah Smith at the address listed below.

This demand is not exhaustive and all rights, claims and remedies are reserved.

Sincerely

A handwritten signature in black ink, appearing to read "Shad White", with a large, stylized loop at the end.

Shad White

SW/sss
Enclosure

SCHEDULE OF EXCEPTION

Favre Enterprises, Inc.

October 12, 2021

ITEM AMOUNT

PRINCIPAL \$600,000.00

INTEREST \$228,000.00

**Interest is calculated at one percent (1%)
per month from July 30, 2018.**

TOTAL \$828,000.00