

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 2001-CA-01553-COA**

**JENO FULOP**

**APPELLANT**

**v.**

**FRANK SUTA**

**APPELLEE**

DATE OF TRIAL COURT JUDGMENT:	07/05/2001
TRIAL JUDGE:	HON. NORMAN L. GILLESPIE
COURT FROM WHICH APPEALED:	LAFAYETTE COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	GOODLOE TANKERSLEY LEWIS
ATTORNEY FOR APPELLEE:	JERRY P. 'JAY' HUGHES, JR.
NATURE OF THE CASE:	CIVIL - CONTRACT
TRIAL COURT DISPOSITION:	DISMISSED.
DISPOSITION:	REVERSED AND REMANDED - 12/10/2002
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	

BEFORE McMILLIN, C.J., BRIDGES AND THOMAS, JJ.  
BRIDGES, J., FOR THE COURT:

¶1. Jeno Fulop brings this appeal from a decision of the Lafayette County Chancery Court dismissing his breach of contract action against Frank Suta as barred by the statute of frauds and time-barred by the statute of limitations. Fulop filed a motion to reconsider that the court denied. Fulop then timely perfected his appeal to this Court.

STATEMENT OF ISSUES

I. DID THE CHANCELLOR ERR WHEN HE DISMISSED FULOP'S CASE AS BARRED BY THE

## STATUTE OF FRAUDS?

### II. DID THE CHANCELLOR ERR WHEN HE DISMISSED FULOP'S ACTION AS TIME-BARRED BY THE STATUTE OF LIMITATIONS?

#### STATEMENT OF FACTS

¶2. Jeno Fulop entered into a contract with Frank Suta in 1986 to purchase land from Suta, and for Suta to install on the land a trailer, a well, electrical service, and a septic tank. Fulop paid Suta from the proceeds of the sale of Fulop's home in California. When Fulop arrived in Lafayette County to receive the conveyance, he discovered that Suta had dug both the well and the septic tank not on Fulop's property, but in fact on Suta's property. However, the friendship between the two men prevented any problems from arising for fourteen years.

¶3. In May of 1999, the well's motor burnt out. Fulop offered to help pay for repairs, but Suta told Fulop that Suta's homeowner's insurance would cover it. But from May of 1999, Suta demanded monthly payments of \$50 for continued use of the water. Fulop countered with an offer of \$20 per month, which Suta accepted. These payments continued until Suta cut off Fulop's water in October 2000, apparently in a dispute over Fulop's refusal to repair a tractor that Suta owned. Fulop was without water service for ten days, during which time he borrowed money from his neighbors, the Kings, and dug a well on his own property. The land under which Fulop's septic tank sits has since 1986 been sold to a third party not involved in this suit.

#### ANALYSIS

### I. DID THE CHANCELLOR ERR WHEN HE DISMISSED FULOP'S CASE AS BARRED BY THE STATUTE OF FRAUDS?

¶4. Mississippi's statute of frauds bars oral contracts not to be performed within fifteen months, as well as unwritten leases longer than one year, as unenforceable. Miss. Code Ann. § 15-3-1 (Rev. 2000). We

are not certain how the chancellor classed the oral contracts involved here, whether as a lease or a personal services contract, as the chancellor provided no conclusions of law to support his decision. In Mississippi, courts sitting without juries are required to provide both a factual basis for their decisions in the form of concrete findings of fact and conclusions of law that are supported in toto by those findings of fact. M. R. C. P. 52 (a). Failure to provide this Court with findings of fact and conclusions of law precludes us from performing our appellate duties. *Tricon Metals & Servs., Inc. v. Topp*, 516 So. 2d 236, 238 (Miss. 1987).

¶5. Presumably, the initial contract where Suta agreed to dig a well and septic tank for Fulop on Fulop's future property was a contract for services, which the court noted was breached in 1986 when Suta dug the well on his own property and the septic tank on property which was later sold to a third party. Apparently, Fulop consented to the situation, which was presented to him as a *fait accompli* upon his arrival in Lafayette County from California. The court did not address whether Fulop's consent created an implied contract for continued water service by Suta to Fulop's property, but this seems likely.

¶6. However, in 1999 Suta compelled Fulop to pay for the continued use of Fulop's well (which was situated on Suta's property and apparently provided water for other neighboring properties also). These payments may either constitute a modification of an existing implied contract for Suta to provide water service to Fulop (who paid for the well initially), or an entirely new personal services contract, or a lease. *See Continental Ins. Co. v. Transamerica Rental Fin. Corp.*, 748 So. 2d 725, 734-35 (¶40-44) (Miss. 1999) (discussing the conditions for oral modification of a written contract); *Eastline Corp. v. Marion Apt., Ltd.*, 524 So. 2d 582, 584 (Miss. 1988) (discussing difference between modification of existing contract and formation of new contract); *Smith v. H.C. Bailey Co.*, 477 So. 2d 224, 234 (Miss. 1985) (reversing and remanding summary judgment because the trial court ignored issues of material fact regarding

the formation of an oral contract). These issues were not sufficiently addressed by the court for this Court to reach a decision on them, and on this count we must reverse and remand for further findings of fact and conclusions of law.

## II. DID THE CHANCELLOR ERR WHEN HE DISMISSED FULOP'S ACTION AS TIME-BARRED BY THE STATUTE OF LIMITATIONS?

¶7. Mississippi's general statute of limitations provides for a three-year time period before the action is cut off. Miss. Code Ann. § 15-1-49 (Rev. 2000). Mississippi also provides for a three-year limitations period for purely oral contracts and implied contracts. Miss. Code Ann. § 15-1-29 (Rev. 2000). Since Fulop's action is based on contract theory and on a theory of fraud, it is safe to say that the appropriate time for him to act was within three years of accrual of the cause of action.

¶8. Thus the real question facing this Court is when Fulop's cause of action accrued, which draws on the nature of Fulop's agreement or agreements with Suta. There is no doubt that as far as Suta and Fulop's original agreement on the digging of the well and septic tank, the statute of limitations has run. There are however a number of other issues involved, including the nature of the agreement between Fulop and Suta for Fulop's continued use of the well, and whether Fulop detrimentally relied on Suta's representations, and whether or not Suta made those representations in good faith. It is quite possible that if Suta made fraudulent misrepresentations, that the statute of limitations may be tolled. Consequently, we must remand for further findings of fact and conclusions of law.

## CONCLUSION

¶9. We are faced with a dilemma: on the one hand, the findings of fact appear to be directly in the appellant's favor. On the other hand, the chancellor has not seen fit to grace this Court with clear conclusions of law supported by the facts. The court below speaks vaguely of the nature of the statute of

frauds, while refusing to characterize the agreements between Fulop and Suta as contracts for personal services or leases. The court also neglected to address the issue of whether the arguably tortious conduct of Suta in coercing payment from Fulop for the use of a well Fulop paid for tolled the statute of limitations.

¶10. Consequently, this Court must reverse and remand the case for further proceedings consistent with this opinion.

**¶11. THE JUDGMENT OF THE CHANCERY COURT OF LAFAYETTE COUNTY OF DISMISSAL IS REVERSED AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLEE.**

**KING, P.J., THOMAS, LEE, IRVING, MYERS, CHANDLER AND BRANTLEY, JJ., CONCUR. SOUTHWICK, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY McMILLIN, C.J.**

SOUTHWICK, P.J., DISSENTING:

¶12. My concerns arise from one central procedural point. The Court reverses in part because of the limited findings of fact and the absence of any conclusions of law. Findings and conclusions are obligatory only when requested by the parties. M.R.C.P. 52. There was no request here. Moreover, trial judge legal conclusions are reviewed anew on appeal. Therefore the trial court's legal views, whatever they were, do not control our analysis anyway.

¶13. The final, related, and most critical matter is that the majority remands because of the chancellor's failure to address an issue. We order additional findings and conclusions regarding that point. I find that if an appellant seeks reversal because a matter raised by the pleadings and even the evidence was not initially ruled upon by the trial judge, that party must have first by motion or otherwise pointed out the oversight to the trial court. Here that was not done.

¶14. The pleadings raised the issue that once the plaintiff learned in 1986 that the water well was not on

his property, that an oral or implied contract to provide water arose. The complaint alleges that Suta had failed to comply with his oral agreement with Fulop in 1986 to have a well drilled on the plaintiff Fulop's property. Fulop sought a preliminary injunction to require compliance. He also sought damages based on misrepresentation and fraud, breach of oral contract, breach of implied contract if the oral contract was found to be too imprecise, breach of implied covenant of fair dealing, and unjust enrichment. These claims were principally based on the failure of Suta to place the water well and septic tank on Fulop's property in 1986. There was, though, also an allegation that in order to make amends, Suta had agreed to provide water service as long as the plaintiff Fulop lived on the property. The relatively recent refusal to do so was alleged to be a breach of contract, and to the extent the breach had been Suta's plan all along, also to have been fraud.

¶15. I agree with the chancellor that the statute of limitations would without meaningful dispute bar all the claims except for those based on an alleged agreement to provide water service for as long as the plaintiff Fulop lived on the property. The chancellor made findings of fact that the agreement to provide a well and septic tank existed and had been breached. He did not address whether there was ever an agreement to provide water so long as the plaintiff remained on the property, and whether that was to be done free of cost. When one person arranges for the digging of a well and presumably the installation of a pump on someone else's property, that likely leaves the owner of the well responsible for maintenance, equipment replacement, and other costs. If instead there is given a continuing right to have water supplied from a well on the promisee's own property, determining whether such an agreement is sufficiently definite might include whether it considered allocating future costs of equipment maintenance or replacement.

¶16. There was little evidence about what occurred in 1986 once the plaintiff discovered that the well was not on his property. Fulop was asked by his counsel what the arrangement was for receiving water,

and the answer simply was that Suta "pumped the water through just like before." The position taken by the defendant at trial is that regardless of the reason that Suta failed to place the water well and septic tank on Fulop property, the substitute right was not a permanent providing of water with Suta's paying all the expenses even fourteen years later. There was evidence of substantial expenses for maintenance and the purchase of two pumps in recent years.

¶17. I raise these factual matters only to show that the existence and the terms of any implied contract to provide water required analysis by the trial judge. Nothing appears in the findings and conclusions spoken into the record regarding an implied contract to provide water. When a chancellor does not make fact findings on a matter, unless it is an issue that by precedent must be addressed in findings, the appellate court is to imply the findings that are consistent with the judgment. *Tricon Metals & Services, Inc. v. Topp*, 516 So. 2d 236, 238 (Miss. 1987).

¶18. On the other hand, there is nothing in the chancellor's judgment indicating that he recalled the issue of an implied contract to provide water service. The only allegations that the chancellor addressed concerned the 1986 agreements to have a well and septic tank placed on the plaintiffs' land. I believe it would be a misapplication of the implied findings rule when there is no evidence that a trial judge even considered a legal issue. *Dycus v. Sillers*, 557 So. 2d 486, 504 n. 70 (Miss. 1990) (court "might imply a finding . . . were it not that the findings of fact before us make it clear that the Court never focused" on the matter).

¶19. I find a different rule applicable that should guide our deliberations. To the extent the plaintiff had another theory that supported his claim, it was his obligation not only to present evidence on the point but to obtain a ruling. Two opportunities existed for counsel to raise this matter. One was when the chancellor finished announcing his findings and conclusions, and he had failed to discuss the implied contract for water

service. No request was then made. The other opportunity was in a motion for reconsideration. Though a motion was filed, it is not included in the record excerpts. Thus there is nothing before us to indicate that the plaintiff ever sought a ruling on the overlooked issue. The majority does that for the plaintiff by remanding for further findings.

¶20. Instead, I would hold that the plaintiff's failure to get a ruling on the issue bars us from doing that for him. In one precedent, a party had pled laches but no ruling on it was ever made. This barred appellate consideration of the issue even though some evidence to support it was introduced:

The problem with Aletha's laches claim is that though pled it was never litigated nor decided. There is nothing in the record suggesting that the trial judge was requested to make findings of fact or enter conclusions of law regarding the laches plea, see Rule 52(a), Miss.R.Civ.P., and, not surprisingly, the point is mentioned neither in the trial judge's memorandum opinion of October 26, 1983, nor his final judgment entered November 7, 1983.

As a prerequisite to obtaining review in this Court, it is incumbent upon a litigant that he not only plead but press his point in the trial court. See *Nationwide Mutual Insurance Company v. Tillman*, 249 Miss. 141, 156-57, 161 So.2d 604, 609 (1964) and particularly *Stubblefield v. Jesco, Inc.*, 464 So.2d 47 (Miss.1984) where we recently refused on appeal to consider whether defendant was entitled to a new trial where it had filed a formal motion for a new trial but had not obtained from the trial judge a ruling on that motion.

*Allgood v. Allgood*, 473 So. 2d 416, 423 (Miss. 1985).

¶21. The desirability of a rule such as this is demonstrated by the present appeal. What the chancellor should have resolved after the evidentiary hearing was for some reason not addressed. Insofar as this record reveals, the chancellor's failure to rule on the possibility of a permanent contract to provide water was never mentioned to him. The appellate court should not be the first tribunal that considers the oversight.

**McMILLIN, C.J., JOINS THIS SEPARATE WRITTEN OPINION.**