

**IN THE COURT OF APPEALS 02/25/97**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-CA-00872 COA**

**BILL NELSON**

**APPELLANT**

**v.**

**CITY OF COLUMBUS, ETHEL L. (STEWART) MITCHELL, AND ALL PERSONS  
HAVING OR CLAIMING LEGAL AND EQUITABLE INTEREST IN THE LANDS  
DESCRIBED IN THIS COMPLAINT**

**APPELLEES**

**THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B**

**TRIAL JUDGE: HON. ROBERT L. LANCASTER**

**COURT FROM WHICH APPEALED: LOWNDES COUNTY CHANCERY COURT**

**ATTORNEY FOR APPELLANT:**

**DENNIS HARMON**

**ATTORNEYS FOR APPELLEES:**

**JOHN W. CROWELL**

**MARC D. AMOS**

**NATURE OF THE CASE: CIVIL--ACTION TO CONFIRM TITLE FROM A TAX SALE**

**TRIAL COURT DISPOSITION: SUMMARY JUDGMENT GRANTED IN FAVOR OF THE  
DEFENDANTS**

**MANDATE ISSUED: 6/10/97**

BEFORE BRIDGES, P.J., COLEMAN, AND PAYNE, JJ.

COLEMAN, J., FOR THE COURT:

The Appellant, Bill Nelson, filed a complaint to confirm his title to two parcels of land in the Chancery Court of Lowndes County. Nelson had been the successful bidder for these two parcels of land at a tax sale which the City of Columbus had conducted on August 27, 1990. The Appellees, the City of Columbus (Columbus) and Ethel L. (Stewart) Mitchell, the record owner of the two parcels of land for which Nelson had been the successful bidder, each moved separately for summary judgment. The chancellor granted their motions for summary judgment. Nelson appeals from the summary judgments in favor of Columbus and Mitchell. We affirm.

## I. FACTS

Because the facts in this case can better be understood in the context of Mississippi's statutory scheme for an owner's redemption of land from the sale of that land for the non-payment of ad valorem taxes, we initiate our recitation of the facts in this case with a review of that statutory scheme. Section 27-45-3 of the Mississippi Code provides for an owner's redemption of his or her land from its sale for the non-payment of the ad valorem taxes assessed against it at any time within two years after the day of the sale. For the non-payment of ad valorem taxes assessed by the county, Section 27-43-1 of the Mississippi Code requires the clerk to give notice "within one hundred eighty (180) days and not less than sixty (60) days prior to the expiration of the time of redemption . . . to the record owner of the land sold as of 180 days prior to the expiration of the time of redemption . . . ." Miss. Code Ann. § 27-43-1 (Supp. 1996). Section 27-43-1 of the Mississippi Code specifies the manner in which the chancery clerk must notify a land owner who, like Mitchell, is a nonresident of the State of Mississippi. Finally, Section 27-43-4 of the Mississippi Code provides that "[w]ith respect to lands sold for the nonpayment of municipal taxes . . . the municipal clerk shall issue the same type notices and perform all other requirements as set forth in section 27-43-1 through 27-43-11, inclusive, . . . ." Miss. Code Ann. § 27-43-4 (Supp. 1996).

With the completion of our review of the foregoing statutes, we relate the following facts in this case. Bill Nelson bid successfully to purchase two parcels of land at a tax sale which Columbus conducted on August 27, 1990. The tax sale was for ad valorem taxes assessed for the year 1989, but which Mitchell, the record owner who resided in the state of California, had never paid. More than two years later, on October 30, 1992, the secretary-treasurer for Columbus, Dorothy W. Pridmore, executed and delivered tax deeds to Nelson, pursuant to his request that Columbus provide him with tax deeds to these two parcels. Our subsequent discussion of Nelson's first issue in his appeal will demonstrate that the secretary-treasurer for Columbus failed to comply with the requisites of notice to Mitchell which Section 27-43-3 of the Mississippi Code contains.

## II. Litigation

In the complaint, which he filed in the Lowndes County Chancery Court, Nelson named Mitchell and the City of Columbus as Defendants. Nelson's complaint contained two counts. In Count I of his complaint, Nelson asked the chancery court "to issue a decree confirming the tax title against all

persons claiming to hold the land by title existing at the time of the sale for taxes." In Count II of his complaint, Nelson argued alternatively that the City of Columbus should be held liable for damages caused by the failure of its secretary-treasurer to file an affidavit which Section 27-43-3 of the Mississippi Code required.

Columbus and Mitchell each moved for summary judgment. The chancellor granted Mitchell's motion based on the clerk's failure to serve proper notice on her and to file the requisite affidavit as required by 27-43-3 of the Mississippi Code. The chancellor granted Columbus' motion for summary judgment because he found that the doctrine of sovereign immunity applied to relieve that municipality from liability to Nelson.

## II. ISSUES AND THE LAW

Nelson's brief contains four issues for this Court to review and analyze. These four issues are as follows:

1.

Whether the specific statutory remedies of § 27-43-3 (M.C.A.) Take precedence over the general sovereign immunity statute.

2.

Whether the City can be ordered to take on action through the court's equitable powers even if the City is not liable at law.

3.

Whether a city that violates a statutory duty can be held liable for the damage it causes.

4.

Whether the redemption period for a tax sale of land had passed if all efforts to give notice had been met except an affidavit of those efforts.

However, Nelson argues only Issues 3. and 4. in his brief. We elect to consider and to analyze Issue 4. first because our resolution of it favorably to Nelson would render moot his Issue 3.

### **A. Whether the redemption period for a tax sale of land had passed if all efforts to give notice had been met except an affidavit of those efforts.**

This Court employs a de novo standard of review when it evaluates and resolves issues decided by

the trial court's grant of a motion for summary judgment. *Seymour v. Brunswick Corp.*, 655 So. 2d 892, 894 (Miss. 1995). The lower court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." M.R.C.P. 56. The evidence in the record must be viewed in the light most favorable to the non-moving party, Nelson. Only if there are no genuine issues of material facts and only if either Columbus or Mitchell is entitled to a judgment as a matter of law will this Court affirm the chancellor's judgment which granted the motions for summary judgment which both Columbus and Mitchell filed.

Section 27-43-4 of the Mississippi Code requires the clerk of a municipality to "issue the same type notices, set forth in sections 27-43-1 through 27-43-11, . . . ." as a chancery clerk would issue for land sold for unpaid county ad valorem taxes. Mississippi Code section 27-43-3 establishes the procedure which the chancery clerk and the sheriff must follow to notify the record owner of land sold for unpaid ad valorem taxes when the two-year period for redemption of the land from the tax sale is about to expire. The requirements for notifying the defaulting land owner of the approaching end of the two-year redemption period differ for a land owner who is resident of the state of Mississippi and a land owner who is a nonresident of the state of Mississippi. The primary difference is that the personal notice which the sheriff must serve on a resident of the state of Mississippi is not to be served on a non-resident. Because Mitchell was a resident of California and thus a nonresident of this state, section 27-43-3 did not require that she be personally served with notice that the two-year period for redeeming her two parcels of land from the August 27, 1990, tax sale was about to expire on August 27, 1992.

However, section 27-43-3 does impose on the municipal clerk the duty to mail, registered or certified, a copy of the notice to the record owner at his usual street address, or post office address if only that is available, and to note such action on the tax sales record. Miss. Code Ann. § 27-43-3 (Supp. 1976). The notice must be issued and so mailed by the clerk to the nonresident within one hundred eighty (180) days and not less than sixty (60) days prior to the expiration of the time of redemption for the land sold at the tax sale. *Id.* If the notice is returned by the post office undelivered, "the clerk shall make further search and inquiry to ascertain the reputed owner's street and post office address." *Id.* After the additional search for and inquiry about the address of the record owner by the clerk, the clerk must again send a notice to the nonresident by registered or certified mail. *Id.* If this second notice is returned undelivered,

[t]hen the clerk shall file an affidavit to that effect and shall specify therein the acts of search and inquiry made by him in an effort to ascertain the reputed owner's street and post office address and said affidavit shall be retained as a permanent record in the office of the clerk and such action shall be noted on the tax sales record.

*Id.* However, if after the clerk's search and inquiry, the record owner's street or post office address still can not be ascertained, mailing the second notice is rendered unnecessary. *Id.* The same affidavit as described above shall be made by the clerk, and the effort of such action shall be noted on the tax sale record. *Id.*

The record is at best opaque about the efforts of the secretary-treasurer (clerk) of Columbus to send

a notice of the approaching expiration of the two-year period for the redemption of her two lots from the August 27, 1990, tax sale to Mitchell in California. However, in the judgment of the Lowndes County Chancery Court in which the chancellor granted Columbus' and Mitchell's motions for summary judgment, the chancellor recited:

Neither Mitchell nor [Nelson] filed affidavits with regard to [Mitchell's motion for summary judgment]. At the hearing of this motion the attorneys for the parties stipulated that no affidavit required by Section 27-43-3 MCA, to be filed with the Chancery Clerk of Lowndes County, Mississippi "specifying therein the acts of search and inquiry made . . . to ascertain the reputed owner's street and post office address" and required by the return of the notice to a non-resident owner by registered owner by registered or certified mail as undelivered, had been filed. This failure rendered the tax deeds issued to [Nelson] void.

The Mississippi Supreme Court has ruled on this same issue in earlier cases. In *Hart v. Catoe*, 390 So. 2d 1001, 1002 (Miss. 1980), Hart, the holder of a tax deed, filed suit to confirm title on a forty-acre tract of land he had purchased at a tax sale Hart requested and received a tax deed to the property after the two year period for redemption ended. *Id.* Citing section 27-43-3 of the Mississippi Code, the supreme court recited the duties of the clerk to notify the land owner before title to the land matures in a purchaser. *Id.* Because the chancery clerk did not follow the notification procedures set forth in section 27-43-3, the landowner was not notified of the approaching expiration of the two-year redemption period. *Id.* The clerk failed to conduct a proper search to find the landowner's address and did not file the affidavit explaining her efforts as required by the statute. *Id.* In its opinion, the supreme court quoted from the following findings of the chancellor:

That Section 27-43-3 of the Miss. Code of 1972 Ann., as amended was not strictly complied with in that the search for the landowner's proper mailing address was not diligent and thorough, as reflected by the availability of said landowner's address on file in the office of the Tax Collector of Forrest County, Mississippi, and for the further reason that the required affidavit specifying the acts of search and inquiry made by the Chancery Clerk, was not filed of record or noted in the tax sale record.

*Hart*, 390 So 2d at 1002.

The supreme court opined: "The public policy of this state favors and protects owners of land from loss by its sale for taxes." *Id.* at 1003 (citations omitted). It then quoted *American Jurisprudence* as follows:

*The requirements of the statute as to the service and proof of service of the notice required to terminate an owner's right to redeem from a tax sale are usually considered to be mandatory and required to be strictly followed. It has been held that no presumption that the requirements of such a statute have been complied with may be indulged. There must be strict compliance with the requirement of the filing of an affidavit showing the making, manner, and place of service, or, in the case of inability to serve the notice a strict compliance with the provisions regarding the proof to be filed showing the excuse for not serving the notice.*

*Id* at 1003.

In *Hammett v. Johnson*, 624 So. 2d 58, 59 (Miss. 1993), the supreme court affirmed a chancellor's ruling that tax deeds were void because of the failure of the clerk to follow the notification procedures which section 27-43-3 required. Under facts similar to *Hart* and the case *sub judice*, the chancery court found the landowner did not receive proper notice from the clerk after the land was sold at a tax sale, and declared the purchaser's tax deed void. *Id* at 59. As in *Hart*, the supreme court cited section 27-43-3 of the Mississippi Code to explain the process the clerk must follow to give the landowner proper notice of the expiration of the redemption period. *Id*. The court then opined that the chancery clerk did not exercise "due diligence to ascertain the record owner where the record owner is clearly reflected in the land records of the chancery clerk." *Id*. The Mississippi Supreme Court then concluded: "It follows that the tax deed issued pursuant to this defective process is void." *Id*.

We return to the *Hart* case to quote from the opinion in that case an appropriate conclusion for our review and resolution of this issue:

The statute involved here must be given a strict construction, and its requirements fully satisfied. Essential mandates of the statute were not followed and the failure so to do renders the tax deed to appellant void. The chancellor was eminently correct in canceling same and the judgment of the lower court is affirmed.

*Hart*, 390 So. 2d at 1003. We conclude that the chancellor in the case *sub judice* "was eminently correct in canceling [Nelson's tax deeds]," and we affirm that part of the judgment of the chancery court which granted Mitchell's motion for summary judgment and accordingly rendered Nelson's tax deeds void.

**B. Whether a city that violates a statutory duty can be held liable for the damage it causes.**

Our resolution of Nelson's Issue No. 4 adversely to him leads to our review and resolution of Nelson's Issue No. 3. Nelson argues alternatively that if his tax deeds were void because the Columbus secretary-treasurer (clerk) did not comply with the requirements of section 27-43-3 for notifying Mitchell that the two-year period for redeeming her two lots from the land sale on August 27, 1990, was about to expire, the City of Columbus should be liable for damages to him for its employee's failure to follow the sections. In the judgment granting Columbus' motion for summary judgment, the chancellor found that Nelson's claim against that municipality was "barred by the absolute sovereign immunity of the City of Columbus, Mississippi under Section 11-46-1 *et seq* MCA."

The concept that the King, *i. e.*, the state, can do no wrong, which the doctrine of sovereign immunity embodies, has been in a state of flux in Mississippi between the years 1982 and 1995. In 1982, the Mississippi Supreme Court abolished the judicially created doctrine of sovereign immunity

in *Pruett v. City of Rosedale*, 421 So. 2d 1046 (Miss. 1982). In *Pruett*, the appellant sought to abolish the immunity of the "sovereign," *i. e.*, "the state, the county, the municipality or any other local subdivision of the sovereign." *Id.* at 1052. However, the supreme court deferred the demise of the doctrine of sovereign immunity until July 1, 1984, to permit the Mississippi legislature two of its terms during the years 1983 and 1984 to act further on the matter, should it elect to do so. *Id.*

The Mississippi legislature enacted the Mississippi Sovereign Immunity Act of 1984, Sections 11-46-1 *et seq.* of the Mississippi Code of 1972, which restored the doctrine of sovereign immunity as the public policy of the State. Section 11-46-6 required our state's courts to apply pre-*Pruett* case law. In 1992 in *Presley v. Mississippi State Highway Comm'n.*, 608 So. 2d 1288 (Miss. 1992), the Mississippi Supreme Court declared that the state constitution prevented the legislature from compelling courts to apply case law that had been specifically overruled in *Pruett*. The court's ruling in *Presley*, "suddenly scrap[ped] the continuing, temporal extensions of immunity the State of Mississippi and its political subdivisions were granted" by legislative enactment that attempted to reinstate the traditional judicial rules on sovereign immunity. *Id.* at 1298.

*Presley* did not establish with four-square certainty whether the Mississippi Supreme Court would apply the unconstitutionality of the Mississippi Sovereign Immunity Act retroactively or prospectively only. Three years later in 1995, the supreme court declared in *Robinson v. Stewart*, 655 So. 2d 866, 868 (Miss. 1995): "What we have stated indirectly we now say directly. *Presley* has no retroactive application." The decision in *Presley* was handed down on August 31, 1992; therefore, it would apply to all causes of action which accrued after that date but to no claims which accrued before August 31, 1992.

We reiterate that Nelson purchased Mitchell's two lots at the tax sale on August 27, 1990. Two years later, on August 27, 1992, Mitchell's right of redemption ended pursuant to section

27-45-23. Thus, section 27-45-23 entitled Nelson to receive the tax deeds on August 27, 1992, four days *before* the date the Mississippi Supreme Court rendered its decision in *Presley*, August 31, 1992. However, Nelson did not request that Columbus' secretary-treasurer execute and deliver tax deeds to him until October 30, 1992, which date was *after* August 31, 1992, the date of rendition of the decision in *Presley*. This Court must resolve the dilemma of whether Nelson's claim accrued before or after August 31, 1992. If it accrued before that date, then we must affirm the chancellor's granting Columbus' motion for summary judgment because the doctrine of sovereign immunity was then alive and well, although only with a four-day life expectancy. If Nelson's claim did not accrue until October 30, 1992, then the doctrine of sovereign immunity had met its demise, so that Columbus was no longer protected by it. In other words, the chancellor erred when he granted Columbus' motion for summary judgment if Nelson's claim against it did not accrue until the date that he demanded delivery of his tax deeds from that municipality because by that time, sovereign immunity was "deader than a door nail."

In *Burgess v. Lucky*, 674 So. 2d 506, 512 (Miss. 1996), the Mississippi Supreme Court confronted the issue of where venue might lie in a wrongful death claim, the basis for which was a medical malpractice claim. The supreme court concluded that venue would properly lie in either the county where the malpractice may have occurred or where the death occurred. *Id.* To arrive at its resolution of this issue, the supreme court considered when a cause of action accrued. The supreme court

wrote:

In *Owens-Illinois, Inc. v. Edwards*, 573 So. 2d 704, 706 (Miss.1990), a statute of limitations case, the Court, quoting *Rankin v. Mark*, 238 Miss. 858, 120 So. 2d 435 (1960), stated that "[a] cause of action accrues only when it comes into existence as an enforceable claim; that is, when the right to sue becomes vested." The Court in *Gentry v. Wallace*, 606 So. 2d 1117 (Miss.1992), was faced with the question of when the statute of limitations begins to run in a wrongful death action stemming from medical negligence. The *Gentry* Court held that in a wrongful death case "the cause of action does not accrue until the death of the negligently injured person." 606 So. 2d at 1119.

*Burgess*, 674 So. 2d at 508.

In light of the foregoing quotation, we must determine when Nelson's claim against Columbus "[came] into existence as an enforceable claim; that is, when [Nelson's] right to sue [Columbus became] vested." If Columbus enjoyed the defense of sovereign immunity when Nelson's claim first became enforceable so that his right to sue Columbus became vested, then we must affirm the chancellor's grant of that municipality's motion for summary judgment.

We first note that in *Powe v. Brantley*, 210 Miss. 627, 50 So. 2d 229, (1951), the land-owner who had lost the land because she had not paid the ad valorem taxes for the years 1934 to 1941 inclusive except for 1940, sought to cancel the tax sale. *Powe*, 50 So. 2d at 230. The current owners of the subject land defended on the ground, among others, that they and they predecessors in title had been in adverse possession of the land for a period of time greater than three years, the minimum amount required by what was then section 716 of the Mississippi Code of 1942. *Id.* The ousted land owner countered this defense with the proposition that the party who had purchased the land at the tax sale had never received a tax deed from the chancery clerk as section 716 seemed to require if the buyer was to claim the defense of three years of adverse possession to defeat the land owner's claim. *Id.* The Mississippi Supreme Court held:

Said Section 9936 provides, in part: 'The tax collector shall on or before the first Monday of June transmit to the clerk of the chancery court of the county, separate certified lists of the lands struck off by him to the state and that sold to individuals, specifying to whom assessed, the day of the sale, the amount of taxes for which the sale was made and each item of cost incidental thereto, and where sold to individuals, the name of the purchaser, to be separately recorded by the clerk in books kept by him for that purpose. The said lists shall vest in the state or the individual purchaser thereof a perfect title to the land sold for taxes, but without the right of possession and subject to the right of redemption; But a failure to transmit or record a list, or a defective list, shall not affect or render the title void. . . . The list hereinabove provided shall, when filed with the clerk be notice to all persons in the same manner as are deeds when filed for record.'

In the recent case of *Seward v. Dogan*, 198 Miss. 419, 21 So. 2d 292, 294, we had occasion to review the aforesaid statutes in a case which involved the right of a tax collector to collect a fee of \$1 for each transfer of property by him under his list of lands



sold to individuals for taxes, pursuant to Section 3936, Code of 1942, as amended, which allowed to the tax collector a fee of \$1.00 'For each conveyance of lands sold to individuals for taxes'. The Court said in that case "The first inquiry is as to whether a conveyance and a deed of conveyance are synonymous, or is a conveyance necessarily limited to deeds of conveyance; and if the list is, under any contemplation of the law, classed a conveyance. In other words, while all deeds are conveyances, is the converse true, that all conveyances are deeds?" After citing numerous authorities and considering the above quoted portion of Section 9936, the court said "So, we have concluded that a definite right or interest in the land is conveyed by the tax collector, which, when he performs his duty, is a conveyance in the contemplation of the law entitling him to the fee of \$1 for each conveyance to an individual tax purchaser . . . ."

*Powe*, 50 So. 2d at 231. The supreme court then overruled two cases, *Hatchett v. Thompson*, 174 Miss. 502, 165 So. 110 (1936) and *Johnson v. Langston*, 189 Miss. 649, 198 So. 321 (1940), which it found to conflict with the previously quoted portion of the *Powe* opinion. *Id.* at 232.

We adopt *Powe v. Brantley* as appropriate precedent on which to rest our determination that the tax deeds which the Columbus secretary-treasurer executed and delivered to Nelson on October 30, 1992, were unnecessary to perfect his title in and to the two lots of which Mitchell was the record owner. Section 27-41-81 of the Mississippi Code of 1972 provides that the recording of the certified lists of the lands struck off by the county tax collector . . . shall vest in . . . the individual purchaser thereof a perfect title to the land sold for taxes." Miss. Code Ann. § 27-41-81 (Supp. 1996). Section 21-33-63 of the Mississippi Code of 1972 provides the same consequences for recording a municipality's list of lands sold for taxes. We rely on *Powe v. Brantley* and Section 21-33-63 of the Mississippi Code of 1972 to rest our conclusion that after the secretary-treasurer for Columbus recorded the list of lands sold for taxes on August 27, 1990, Nelson held perfect title to the two lots, subject to Mitchell's redemption of them no later than August 27, 1992. Unless Mitchell redeemed the lots by August 27, 1992, Nelson, who had held "perfect title" to the lots since August 27, 1990, pursuant to sections 27-41-81 and 21-33-63 of the Mississippi Code of 1972, could then exercise possession of the lots pursuant to those same sections. He did not need a tax deed from Columbus to become the owner of these two lots because the clerk's recording the list of lands sold for the nonpayment of taxes conveyed those two lots to Nelson.

Whatever claim Nelson may have had against Columbus for his loss of ownership of these two parcels of land, that claim necessarily accrued on or before the expiration of Mitchell's two-year period for the redemption of her land on August 27, 1992, because after that date Nelson owned the lots with the right to possess them. Therefore, we conclude that the law as it existed on August 27, 1992, not on October 30, 1992, the date the tax deeds were executed and delivered to Nelson determines whether Nelson can pursue his claim for the loss of the two lots against Columbus. Nelson's claim against Columbus could result only from its secretary-treasurer's failure to comply with the notification requirements of Section 27-43-3, which we have already described and discussed in detail.

On August 27, 1992, the doctrine of sovereign immunity continued to protect the political

subdivisions of the state, among which was the municipality of Columbus, from liability for the negligent actions of their employees. However, before we can conclude with finality that the chancellor did not err when he granted Columbus' motion for summary judgment by applying the doctrine of sovereign immunity to bar Nelson's claim against it, we must first review the distinction between "governmental" and "proprietary" functions of a political subdivision of the state like the municipality of Columbus.

Mississippi has long recognized two different functions which a municipality like Columbus performs. These different functions are categorized as governmental and proprietary functions. Governmental functions "are activities or services which a municipality is required by state law to engage in and to perform." *Morgan v. City of Ruleville*, 627 So. 2d 275, 279 (Miss. 1993). They usually involve some aspect of governmental administration. Proprietary functions "are those which, while beneficial to the community and very important, are not vital to a City's functioning. (Zoo, football stadium)." *Id.* Thus, proprietary functions are primarily designed to promote the comfort, convenience, safety, and happiness of the citizens. The Mississippi Supreme Court wrote in *White v. City of Tupelo*, 462 So. 2d 707, 708 (Miss. 1984): "[A]bsent statutory provisions, there can be no recovery against a municipality based on negligence in the exercise of functions which are essentially governmental in character; however, when acting in a private or a proprietary capacity, it is liable in tort the same as private corporations." The supreme court continued, "Thus the issue, simply stated, is whether the city was acting in its private or proprietary capacity, or exercising its governmental functions." *Id.* The duties of a clerk to notify a landowner of the pending expiration of the redemption period after a tax sale is a classic governmental function which the law of Mississippi demands that the clerk accomplish. Therefore, a municipality is not liable for the failure of its clerk to carry out that particular governmental function under the doctrine of sovereign immunity. Thus, we affirm the chancellor's grant of Columbus' motion for summary judgment on the basis of sovereign immunity and resolve this issue against Nelson.

However, Nelson argues that the sentence in Section 27-43-3 of the Mississippi Code which reads, "If the clerk or sheriff shall fail to perform the duties herein prescribed, he shall be liable to the party injured by such default in the penal sum of twenty-five dollars (\$25.00) in addition to the actual damages sustained," must override the application of the doctrine of sovereign immunity to his claim in this case. He argues, "This is a specific statute with specific penalties." The statute, however, sets out definite penalties for which the clerk is personally liable in an individual capacity for failure to perform his or her duties. "A public officer who knowingly or negligently fails . . . to perform a ministerial act which the law or legal authority absolutely requires him to do may be compelled to respond in damages . . . to the extent of the injury proximately caused by the nonperformance." 63A Am. Jur. 2d *Public Officers & Employees* § 374 (1984). "As a public ministerial officer, the clerk is answerable for any act of negligence . . . resulting in injury to the complaining party." 15A Am. Jur. 2d *Clerks of Court* § 27 (1976).

This argument appears to support Nelson's first issue, which was "[w]hether the specific remedies of § 27-43-3 (M.C.A.) take precedence over the general sovereign immunity statute, although he offers this proposition in that part of his brief which he devotes to the issue of Columbus' secretary-treasurer's failure to notify Mitchell in compliance with Section 27-43-3 of the Mississippi Code of 1972. Nelson did not make the municipal clerk (Columbus' secretary-treasurer) a party to his lawsuit. While the clerk may have been liable for her failure to discharge her statutory duty to act diligently

when she notified defaulting land owners pursuant to Section 27-43-3, Nelson can not complain because he omitted her as a party to his lawsuit; and Columbus is protected from liability to Nelson by the principle of sovereign immunity.

In bringing an action against the clerk of court for negligence in the performance of some duty or act, counsel is advised to name *not only the clerk of court*, but also the governmental entity under whose authority the clerk acts, . . . if not otherwise protected from liability under sovereign immunity or by statute.

Andrea G. Nadel, Annotation, *Applicability of Judicial Immunity to Acts of Clerk of Court Under State Law*, 34 A.L.R. 4th 1186 (1984) (emphasis added). While this is only a statement of the general law, it follows that the clerk cannot be held liable by the chancellor for her default in the discharge of her statutorily imposed duty when Nelson elected to omit her as a party to his lawsuit.

Finally, we note that pursuant to section 27-45-5 of the Mississippi Code of 1972, Nelson is entitled to reimbursement of the money he paid for the property at the tax sale. The judgment by which the chancellor granted Columbus' and Mitchell's motions for summary judgment provided Nelson the following relief with regard to his being reimbursed for the money which he had paid at the tax sale for Mitchell's two lots:

The answers of [Columbus] and Mitchell admit such money should be repaid to [Nelson]. Mitchell prays for a reasonable time to redeem her interest in the subject properties, and she has actual notice on the fact that the properties must be redeemed or title will vest in [Nelson]. It is, therefore ordered and adjudged that Mitchell shall redeem her interests within 60 days of the entry of this judgment and in default of which the contingent tax titles held by [Nelson] shall mature pursuant to law, and [Nelson's] right to valid tax deeds shall then become absolute.

Our affirming the judgment of the chancery court will, of course, affirm this portion of the judgment which provides for Mitchell's reimbursement of Nelson's payment for the property at the tax sale.

#### **IV. Summary**

As Nelson himself all but concedes, the tax deeds which Dorothy Pridmore executed and delivered to Nelson as the secretary-treasurer of Columbus on October 30, 1992, are void because of her failure to follow the proper notification procedure which Section 27-43-3 of the Mississippi Code of 1972 requires for nonresidents of the state of Mississippi. Nelson's claim against Columbus for damages which he claims he sustained as the result of the secretary-treasurer's failure to follow the proper notification procedure established by Section 27-43-3 of the Mississippi Code of 1972 is barred by the application of the doctrine of sovereign immunity, even if it met its demise on August 31, 1992, only four days after Nelson's claim accrued against Columbus on August 29. Thus, we hold that the chancellor did not err in granting summary judgment in favor of both Columbus and Mitchell because we also find that no material issue of fact existed in this case and

that, as we have endeavored to explain, both Columbus and Mitchell were entitled to judgment as a

matter of law.

**THE JUDGMENT OF THE LOWNDES COUNTY CHANCERY COURT IS AFFIRMED.  
COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT, BILL NELSON.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., AND SOUTHWICK, JJ., CONCUR.  
DIAZ, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY BARBER, J.  
PAYNE, J., CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY KING, J.  
HERRING, J., NOT PARTICIPATING.**

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**PAYNE, J., CONCURRING:**

In the interest of collegiality and because the result was correct, I have hesitated to write in regard to this case. However, now that there has been a dissent, and I believe that both of the decisions miss the seminal issue, I feel compelled to speak. I concur wholeheartedly in regard to the first issue: invalidity of the tax deed. It is the reasoning on the second issue, sovereign immunity, with which I

disagree. The issue in regard to sovereign immunity and the progression of the law in regard thereto, although well reasoned, is entirely irrelevant to this case. I applaud the majority for an excellent delineation of the history of sovereign immunity in Mississippi in recent years, but it is unnecessary because we need not reach that question.

This case is ripe for summary judgment, not because of sovereign immunity, but because Nelson does not have a cause of action. The purchaser at a void tax sale has only the rights set forth in Miss. Code Ann. Section 27-45-27 which states that the purchaser may have a lien on the land for five per cent of the purchase price plus reimbursement of the purchase price and interest -- not a claim against the governmental entity that handled the sale. The rights of a purchaser at a tax sale, found in Section 27-45-27 remained the same from 1932 until amended in 1995 and were as follows at the time of the 1990 tax sale:

The amount paid by the purchaser of land at any tax sale thereof for taxes, either State and county, levee or municipal, and five per centum on said amount, and interest on the amount paid by the purchaser at the rate of one per centum per month, or any fractional part thereof, and all expenses of the sale and registration, and all sums paid for the taxes on the land after its sale and purchase, and interest thereon at the rate of one per centum per month, or any fractional part thereof shall be a lien on the land in favor of the purchaser and the holder of the legal title under him, by descent or purchase, if the taxes for which the land was sold were due, although the sale was illegal on some other ground. And the purchaser and the holder of the legal title under him by descent or purchase, may enforce the lien by bill in chancery, and may obtain a decree for the sale of the land in default of payment of the amount within some short time to be fixed by the decree; and, in all suits for the possession of land, the defendant holding by descent or purchase, mediately or immediately, from the purchaser at the tax sale of the land in controversy, may set off against the complainant the above-described claim, which shall have the same effect and be dealt with in all respects as provided for improvements in a suit for the possession of land. But the term suits for the possession of land as herein used does not include an action of unlawful entry and detainer.

Miss. Code Ann. § 27-45-27 (1972). Our supreme court has often reiterated the limitation of remedy for a purchaser at a void tax sale.

We hold that the appellant acquired no title under said deed, but only the right to be reimbursed for the amount of taxes, interest, and damages which were due to be paid at the time of the sale, and of course, subsequent interest thereon, with subsequent taxes, if any, [p]aid by appellant.

*Williams v. Scott*, 170 So. 2d 621, 624 (Miss. 1965). Of course, equity requires that a tax sale purchaser also be reimbursed for any improvements made to the property while he is in possession and before a determination that the tax sale is invalid. See *McMahon v. Yazoo Delta Lumber Co.*, 46 So. 57 (Miss. 1908). Since there was no possession by Nelson in this case, that equitable remedy is not necessary for our consideration.

Nelson asserts his claim to damages against the city through Miss. Code Ann. Section 27-43-3. That section as amended in 1981 was in effect at the time of the tax sale and the execution of the tax deed. At that time, Section 27-43-3 read, in pertinent part, as follows:

The failure of the landowner to actually receive the notice herein required shall not render the title void, provided the clerk and sheriff have complied with the duties herein prescribed for them. If the clerk or sheriff shall fail to perform the duties herein prescribed, he shall be liable to the party injured by such default in the penal sum of Twenty-five Dollars (\$25.00) in addition to the actual damages sustained.

Miss. Code Ann. § 27-43-3 (Supp. 1982). Clearly, Section 27-43-3 is a *penalty* provision and Nelson is entitled to recover \$25.00 against the clerk who failed to perform duties necessary for a valid sale. However, Nelson's *only* remedy for damages is provided for under Section 27-45-27 as previously discussed. Granted, the penalty provision in Section 27-43-3 may be inartfully drawn; however, if we read it in conjunction with all the tax sale statutes, no where is there an indication that Nelson should be entitled to recover damages from the land and also be allowed to recover damages from the clerk. To hold otherwise would permit Nelson to double recover.

The Mississippi Supreme Court has held "an unjust or unwise purpose in a statute will not be imputed to the Legislature which enacted it when any other reasonable construction is possible." *Kron v. Van Cleave*, 339 So. 2d 559, 562 (Miss. 1976) (citing *Pattison v. Clinghan*, 93 Miss. 310, 47 So. 503 (1908)). Neither Section 27-45-27 nor Section 27-43-3 provide Nelson a cause of action for "actual damages" from the clerk, much less the city. Nelson's claim is an unreasonable construction of these statutes.

For these reasons, I find Nelson's claim against the city to be unfounded as well as misplaced; and therefore, I concur in the holding that summary judgment was correctly granted to the city.

**KING, J., JOIN THIS SEPARATE WRITTEN OPINION.**

**IN THE COURT OF APPEALS 02/25/97**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-CA-00872 COA**

**BILL NELSON**

**APPELLANT**

**v.**

**CITY OF COLUMBUS, ETHEL L. (STEWART) MITCHELL, AND ALL PERSONS  
HAVING OR CLAIMING LEGAL AND EQUITABLE INTEREST IN THE LANDS  
DESCRIBED IN THIS COMPLAINT**

## APPELLEES

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

DIAZ, J., DISSENTING:

I respectfully dissent from the majority's opinion that sovereign immunity protected the City of Columbus from being sued in this case. In this case, Nelson purchased the property at the tax sale on August 27, 1990. According to section 27-45-23 of the Mississippi Code, Nelson was entitled to receive the tax deeds on August 27, 1992, after the two-year redemption period. However, Nelson did not receive the deeds until October 30, 1992. The majority holds that the law as it existed on August 27, 1992 is the applicable law.

This Court has defined accrual:

A cause of action accrues only when it comes into existence as an enforceable claim; that is, when the right to sue becomes vested. A cause of action must exist and be complete before an action can be commenced, and, when a suit is begun before the cause of action accrues, it will generally be dismissed if proper objection is made.

*Owens-Illinois, Inc. v. Edwards*, 573 So. 2d 704, 706 (Miss. 1990) (citations omitted). A tort is not complete until the injury occurs. *Owens-Illinois, Inc.*, 573 So. 2d at 706. This Court also recognizes the fact that there are certain causes of action where the wrongful act and the resulting injury do not occur simultaneously. *Id* at 708. In such instances, we have recognized the "discovery rule" which provides that in actions that involve latent injury, the cause of action does not accrue until the plaintiff has discovered, or by reasonable diligence should have discovered, the injury. *Schiro v. American Tobacco Co.*, 611 So. 2d 962, 964 (Miss. 1992). This is applicable in the case *sub judice*.

After the lapse of the redemptive period in a tax sale, a tax deed conveys a complete and perfect title to the tax adjudicate as to the world. *Jackson v. Hanna*, 206 So. 2d 779, 784 (La. Ct. App. 1968). "The origin of this complete and perfect title may correctly be said to date from the tax deed, and antecedent defects or missing links in the title become immaterial." *Jackson*, 206 So. 2d at 784. "A tax collector's conveyance shall vest in the purchaser a perfect title to the land sold for taxes, subject to the right of redemption. The conveyance is not delivered to the purchaser until the expiration of the period of redemption." *Murphy v. Seward*, 145 Miss. 713, 727 (1926).

In the present case, Nelson did not receive his tax deed until October 30, 1992. That is the earliest date that Nelson could claim to have perfect title of the land in question. More importantly, in this case, it is the first date that Nelson would have had an enforceable claim against the City of Columbus. Therefore, I would hold that this cause of action did not accrue until October 30, 1992; it would follow that the law as it stood on October 30, 1992, should be the applicable law. Since the

*Presley* case was released on August 31, 1992, the prospective application of that holding would dictate that sovereign immunity would not shield the City of Columbus in this case. It is for the foregoing reasons that I would reverse the case against the City of Columbus and remand the cause back to the chancery court for a trial on its merits.

**BARBER, J., JOINS THIS SEPARATE OPINION.**