

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2018-01079-SCT

TIPPAH COUNTY, MISSISSIPPI

APPELLANT

v.

**FRANK JOSEPH LEROSE AND WIFE
TAMMY ANN LEROSE**

APPELLEES

**APPEAL FROM THE
CIRCUIT COURT OF TIPPAH COUNTY, MISSISSIPPI
CASE NO. CV-2017-089-A**

BRIEF OF APPELLANT

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record hereby certifies that the persons listed below are either parties to this appeal or have an interest in the outcome of this lawsuit. These representations are made in order that the Justices of this Court may evaluate possible recusal or disqualification.

- 1.. The Honorable Andrew K. Howarth, Circuit Court of Tippah County, Mississippi,
Trial Judge;
2. Tippah County, Mississippi, Defendant/Appellant;
3. Frank Joseph LeRose and Wife Tammy Ann LeRose, Plaintiffs/Appellees;
4. Daniel J. Griffith and Christopher N. Bailey, Jacks Griffith Luciano, P.A., Cleveland,
Mississippi, Attorneys for Tippah County, Attorneys for Defendant/Appellant;
5. Wendell H. Trapp, Jr., Mitchell, McNutt & Sams, P.A, Corinth, Mississippi,
Attorney for Plaintiffs/Appellees;

RESPECTFULLY SUBMITTED, this the 13th day of February, 2019.

/s/ Christopher N. Bailey
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Attorney for Tippah County, Mississippi

STATEMENT REGARDING ORAL ARGUMENT

Tippah County, Mississippi does not believe that oral arguments would be useful to this Court as the issues raised herein have been succinctly addressed by previous decisions of this Court.

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I. Statement of the Issues

1. Whether the Circuit Court of Tippah County was without jurisdiction to hear a collateral action and erred in hold that the Plaintiffs were entitled to judgment as a matter of law when Plaintiffs failed to appeal the Tippah County Board of Supervisors August 15, 2016, decision pursuant to § 11-51-75 of the Mississippi Code?
2. Whether the Circuit Court erred in holding as a matter of law the Tippah County Board of Supervisors was without jurisdiction to alter modify or repeal a prior order of the Board when § 19-3-40(1) provides that boards of supervisors retain jurisdiction over their prior orders?
3. Alternatively, assuming Plaintiffs were not required to comply with § 11-51-79 and a county board of supervisors does not retain jurisdiction over its own prior order under § 19-3-40(1), whether the circuit court lacked jurisdiction to entertain this action, an action for inverse condemnation, under this Court's holding in Delta MK, LLC v. Mississippi Transportation Commission, 57 So. 3d 1284 (Miss. 2011)?

II. Statement of Assignment

This case is an interlocutory review of the Tippah County Circuit Court decision to grant partial summary judgment in favor of the Plaintiffs. By Notice of Retention the Mississippi Supreme Court elected to retain jurisdiction of this matter. Moreover, this case presents questions of fundamental issues of broad public importance requiring ultimate determination by the Mississippi Supreme Court.

III. Statement of the Case

This case is about an alleged taking, or inverse condemnation, and involves settled law regarding the jurisdiction of the circuit court pursuant to § 11-51-75 of the Mississippi Code, the jurisdiction of a county board of supervisors over its prior order pursuant to § 19-3-40(1), and, alternatively, the subject-matter jurisdiction of the circuit court to hear a claim for inverse condemnation. Tippah County appeals the *Opinion / Order Sustaining Plaintiff's Motion for*

Partial Summary Judgment (“Opinion”) of the Tippah County Circuit Court. (R. 401-08)

In its Opinion, the trial court held as a matter of law that the LeRoses were not required to appeal the August 15, 2016, decision of the Tippah County Board of Supervisors (the “Board”) rescinding and declaring void its February 27, 2015, decision to close County Road 701A due to lack of proper notice, and that the Board was without jurisdiction to rescind its prior order. (R. 405-06). The trial also held that the “actions taken by the Board on August 15, 2016, was the equivalent of “taking” the property of Plaintiff without compensation and without due process and in derogation of the eminent domain statutes of the State of Mississippi.” (*Id.*). However, the trial court did not address its own subject-matter jurisdiction to consider whether a taking, more properly an inverse condemnation, occurred, even though this question was raised in briefing to the Court by Tippah County. (R. 340 & 378-81).

Statement of the Facts

The LeRoses are the owners of the property in Tippah County, Mississippi, through which County Road 701A runs. The Tippah County Board of Supervisors (“Board”) is the governing body of Tippah County.

On February 27, 2015, the Board entered an order purportedly closing County Road 701A. (R. 343-44). At its August 15, 2016, regular meeting, the Board determined that proper notice was not given for the closure of the Road and declared its February 27, 2015, Order void and ordered that the Order be rescinded. (R. 350). No appeal was taken from the Board’s August 15, 2016 decision. (R. 331).

On July 6, 2017, the LeRoses filed their initial Complaint against Tippah County. (R. 1-17). On August 7, 2017, the LeRoses filed their Amended Complaint seeking the Circuit Court to

declare that the August 15, 2016, Order of the Tippah County Board of Supervisors null and void, closure of County Road 701A, and monetary relief. (R. 24-38). The LeRoses alleged that the Board improperly and without authority adopted an Order rescinding the February 27, 2015, Order closing County Road 701A, and that the action taken by the Board was contrary to law and was null and void. (R. 25). The LeRoses also asserted a taking with due compensation claim. (R. 27).

On April 3, 2018, the LeRoses moved for partial summary judgment arguing that once the ten day period for an aggrieved party to appeal the decision of the Board had expired, the Board no longer possessed jurisdiction over its order and could not later revisit or reconsider its order. (R. 317-21, 389-91). The LeRoses also argued they were not required to appeal the Board's August 15, 2016, decision because they were without notice of the Board's August 15, 2016, Regular Meeting. (R. 330-33, 392-93). Finally, despite arguing their property was taken without due process and without due compensation, (R. 27, 321-23), the Respondents argued the circuit court has jurisdiction because "this is not a true inverse condemnation case." (R. 395).

Tippah County responded arguing the LeRoses were required to appeal the Board's August 15, 2016, determination within ten days, and the failure to do so was a jurisdictional bar to this action. (R. 362-66). Tippah County also argued no special notice was required for the Board to consider business at a regular meeting because Plaintiffs were charged with constructive notice of the Board's regular meeting satisfying constitutional guarantees of due process, and that the Board retained jurisdiction to alter, modify and even repeal its own prior order under Mississippi Code § 19-3-40(1), even after the ten-day period for appealing the Board's decision expired. (R. 366-68). Finally, Tippah County argued the circuit court lacked jurisdiction over the

LeRoses takings claim as it was a claim for inverse condemnation cognizable only in the special court of eminent domain. (R. 378-81).

After briefing by the parties was complete, the Circuit Court entered its Opinion without hearing oral arguments on July 5, 2018. (R. 401-08). In its Opinion, the Circuit Court addressed only the issue of liability, stating:

As this is a Motion for Partial Summary Judgment it is not the province of this Order to address the other issues of this legal proceeding. The issue of damages, if any, and the defenses (including immunity defenses to the subject of damages) are not the subject hereof.

(R. 406).

From the decision of the Tippah County Circuit Court decision, Tippah County sought interlocutory review of the Circuit Court's decision which was granted by Order of this Court entered on October 11, 2018. (R. 409).

IV. Summary of the Argument

This is not a case of first impression. Instead, the contours of this case have been effectively addressed by previous decisions of this Court. As a matter of law, the Circuit Court was without jurisdiction to entertain this collateral attack on the Board's decision absent a timely appeal under § 11-51-75, and erred in not dismissing this case for lack of jurisdiction. The Circuit Court also erred in finding the Board was without jurisdiction to reconsider its prior order closing County Road 701A. As a matter of law, boards of supervisors may reconsider their previous decision and issue new decisions after the expiration § 11-51-75 ten-day window for appeal, even when the decision to be reconsidered is the closure of a county road under § 65-7-121. Further, this decision, taken in the presence of jurisdiction, required the Board to make a

discretionary decision in making findings of fact and conclusions of law which were functionally equivalent to that made by judicial officers sitting in judgment entitling Tippah County to judicial immunity. Finally, assuming *argumedo* the appeal requirements of § 11-51-75 and a county board of supervisors does not retain jurisdiction under § 19-3-40(1), the circuit court erred in retaining jurisdiction over this inverse condemnation action to determine damages. Such a claim is an eminent domain proceeding initialed by the property owner rather than the purported condemnor and is cognizable only in the special court of eminent domain.

V. Argument

Standard of Review

This Court reviews a grant or denial of a motion for summary judgement employing a de novo standard of review. *See Rankin Cty. Bd. of Supervisors v. Lakeland Income Properties, LLC* 241 So. 3d 1279, 1282 (Miss. May 10, 2018). Rule 56(c) of the Mississippi Rules of Civil Procedure provides that summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. M.R.C.P. 56(c). The rule requires that two elements be met in order for a court to grant summary judgment: 1) that there is no genuine issue of material fact, and 2) that the moving party is entitled to judgment as a matter of law. *Id.* Here, the Circuit Court erred in granting summary judgment to the Plaintiffs’ because they are not entitled to judgment as a matter of law as the law applicable to the issues before the Court favor the Defendant.

Law and Argument

- I. As a matter of law the Circuit Court was without jurisdiction to hear a collateral action and erred in holding that the LeRoses were entitled to judgment as a matter of law when they failed to appeal the County Board's August 15, 2016, decision pursuant to § 11-51-75 of the Mississippi Code.**

The Circuit Court held, as a matter of law, the LeRoses were not required to appeal the August 15, 2016, decision of the Board pursuant to § 11-51-75 of the Mississippi Code. (R. 343-44). However, as this Court has repeatedly held, absent a timely appeal pursuant to § 11-51-75, a circuit court is without jurisdiction to hear the case, even when the board's authority is questioned. *McPhail v. City of Lumberton*, 832 So. 2d 489, 492 (Miss. 2002).

As is familiar to this Court, any act of a board of supervisors which leaves a party aggrieved is appealable to the circuit court pursuant to § 11-51-75 of the Mississippi Code. *S. Cent. Turf, Inc. v. Jackson*, 526 So. 2d 558, 561 (Miss. 1988). That section provides the exclusive remedy for the aggrieved party. *E.g. Malone v. Leake Cty. Bd. of Supervisors*, 841 So. 2d 141, 145 (Miss. 2003). Section 11-51-75 provides in pertinent part:

Any person aggrieved by a judgment or decision of the board of supervisors, or municipal authorities of a city, town, or village, may appeal within ten (10) days from the date of adjournment at which session the board of supervisors or municipal authorities rendered such judgment or decision, and may embody the facts, judgment and decision in a bill of exceptions which shall be signed by the person acting as president of the board of supervisors or of the municipal authorities.

MISS. CODE ANN. § 11-51-75.

To perfect an appeal of a board's decision, an aggrieved party must file a bill of exceptions within ten days of the board's decision as outlined in § 11-51-75. Both this Court and the Mississippi Court of Appeals have described the ten day appeals requirement of § 11-51-75

as both “mandatory and jurisdictional.” *Lowndes Cty. v. McClanahan*, 161 So. 3d 1052, 1056 (Miss. 2015); *Newell v. Jones Cty.*, 731 So. 2d 580, 582 (Miss. 1999) (citing *Moore v. Sanders*, 569 So. 2d 1148, 1150 (Miss. 1990)); *Carthan v. Patterson*, 134 So. 3d 374, 376 (Miss. Ct. App. 2014). Where an appeal is not perfected within the statutory time constraints, no jurisdiction is conferred on the circuit court; and the untimely action should be dismissed.” *See e.g. Newell*, 731 So. 2d at 582 (affirming dismissal of action for failure to comply with § 11-51-75); *see also City of Jackson v. Allen*, 242 So. 3d 8, 17 (Miss. Feb. 1, 2018) (affirming that “a bill of exceptions is, in an of itself, a jurisdictional requirement should an aggrieved party wish to appeal a decision of a county or municipal board); *S. Cent. Turf, Inc.*, 526 So. 2d at 561 (holding “[w]e are of the opinion that any act of a county or municipality leaving a party aggrieved is appealable under § 11-51-75”).

In *McClanahan*, the Mississippi Supreme Court illustrated the operation of § 11-51-75 in addressing a similar issue. 161 So. 3d at 1054. There, after several residents sought reconsideration of the Lowndes County Board of Supervisors’s October 31, 2011 decision to abandon a railroad crossing pursuant to § 65-7-121, the same provision at issue here, the board of supervisors voted on February 6, 2012, to affirm its October 31, 2011, decision. *Id.* at 1054. Unlike here, the residents filed a bill of exceptions on February 16, 2012 challenging both the board’s October 31st decision and the board’s February 6th decision. *Id.* The circuit court set aside the board’s October 31st decision, denied the board’s motion to dismiss for lack of timely appeal, and granted the relief requested in the resident’s bill of exceptions. *Id.* at 1055. On appeal, the Mississippi Supreme Court reversed, holding that the resident’s challenge to the board’s October 31st decision was untimely under § 11-51-75 because the residents failed to

appeal that decision within ten days of the October 31st decision . *Id.* at 1056. However, the resident's challenge to the board's February 6th decision was within § 11-51-75's ten-day period allowed for appeal and therefore could proceed. *Id.* at 1057.

In *Carthan*, the Mississippi Court of Appeals held that a plaintiff was jurisdictionally barred from asserting his unconstitutional takings action in a collateral action when he failed to appeal the municipal board's decision to declare plaintiff's warehouse a public nuisance and to demolish the warehouse. 134 So. 3d at 376-77. The trial court granted the city's motion for summary judgment holding that it was without jurisdiction under §11-51-75 due to the plaintiff's failure to perfect his appeal within ten days. *Id.* at 376. The Mississippi Court of Appeals affirmed, holding that the plaintiff's failure to perfect his appeal of the municipal board's decision pursuant to §11-51-75 operated as a jurisdictional bar to his separate claim, a collateral attack on the board's decision. *Carthan*, 134 So. 3d at 377; *see also McPhail*, 832 So. 2d at 492 (holding failure of former municipal judge to appeal municipal board's decision to remove him operated as a jurisdictional bar to plaintiff's independent action and the circuit court erred in excusing plaintiff's failure to appeal for the reason plaintiff was challenging board's authority because plaintiff's complaint clearly sought declaration board's decision was null and void.).

It is anticipated the Plaintiffs will argue they were excused from appealing the Board's August 15, 2016, decision, taken at a regular meeting of the Board, because they were without notice, actual or constructive, that the Board was contemplating rescinding the February 27, 2015, decision. (R. 330-33, 393). The circuit court did not address this argument, though the Plaintiffs made this argument in briefings to that court. (R. 401-08).. The Plaintiffs, however, were charged with constructive notice of all regular meetings of the Board, including recessed

regular meetings, pursuant to § 19-3-11 of the Mississippi Code. *See Tally v. Board of Sup'rs of Smith County*, 323 So. 2d 547, 548-49 (Miss. 1975) (§ 19-3-11 furnishes the general public constructive notice of all regular meetings of a board of supervisors and no other notice is required, except were specifically required to statute, in order for the board to conduct their business. That section satisfies constitutional guarantees of due process because all persons are charged with knowledge of the provisions of statutes and must take note of the procedures adopted by them.); *Byrd v. Byrd*, 8 So. 2d 510, 512 (Miss. 1942) (“It is important that all persons interested in the business to be transacted by the board be advised by proper notice so that they may know when they may present claims, petitions or other matters, and also keep advised of its proceedings so as to remain alert to any discussions or proposed action which may affect their interests. The statute furnishes such notice as to all regular meetings, at which there may be transacted all business over which the board is given jurisdiction.” “So long as the board remains in regular session and its minutes show no final discontinuance thereof, all persons are charged with notice that it is free to transact all matters proper at such meeting.”).

There is no dispute the Plaintiffs did not attempt to appeal the Board’s August 15, 2016, decision. Rather, the Plaintiffs filed this independent suit on July 6, 2017, seeking damages and a declaration that the Board’s decision is null and void. Respondents’ failure to timely appeal the Board’s decision operates as a jurisdictional bar to Respondent’s suit and deprived the circuit court of jurisdiction to hear this collateral attack on the board’s decision. *McClanahan*, 161 So. 3d at 1056, *Carthan*, 134 So. 3d at 377, *McPhail*, 832 So. 2d at 492. As such, the circuit court was without jurisdiction, and erred in granting partial summary judgment to the Plaintiffs.

II. The Circuit Court erred in holding as a matter of law the Board was without jurisdiction to alter modify or repeal its prior February 27, 2015, Order closing County Road 701A when § 19-3-40(1) provides that boards of supervisors retain jurisdiction over their prior orders.

The circuit court held the Tippah County Board of Supervisors lacked jurisdiction on August 15, 2016, to reconsider its February 27, 2015, decision regarding County Road 701A. (R. 4-1-08). In the Plaintiffs' Motion for Partial Summary Judgment briefing to the circuit court, they urged that once the ten day period to appeal the Board's February 27, 2015, decision passed, "the Board's action is final and the Board no longer has jurisdiction of the matter." (R. 317, *see also* R. 389-90). However, this Court has held on similar facts that boards of supervisors may reconsider their previous decisions and issue new decisions after the expiration of §11-51-75's ten-day period to appeal. *McClanahan*, 161 So. 3d at 1057 (citing MISS. CODE ANN. §19-3-40 ("[A]ny such board shall likewise have the power to alter, modify and repeal such orders, resolutions or ordinances," and holding board of supervisors "certainly are not prohibited from reconsidering their previous decision" to close county road under §65-7-121 and issuing new decision. "And when they do - as they did in this case - Section 11-51-75 allows aggrieved residents to file a bill of exceptions challenging the new decision.")).

Section 11-51-75, cited above, does not speak in terms of a board losing jurisdiction over its prior orders, as the Plaintiffs contended, (R. 317, 389-90), but speaks in terms of when and how an appeal from a board's decision must be taken by the aggrieved party to the circuit court. *See* 11-51-75. Thus, §11-51-75 speaks to how and under what conditions a circuit court may take jurisdiction to review the decision of a board of supervisors. Only if a decision of a board of

supervisors is timely appealed pursuant to §11-51-75 is the board divested of any jurisdiction to subsequently modify its own order.

Section 19-3-40(1) provides the authority for a board of supervisors to alter, modify, or even repeal any order, resolution, or ordinance it has previously adopted. That section provides in pertinent part:

The board of supervisors of any county shall have the power to adopt any orders, resolutions or ordinances with respect to county affairs, property and finances, for which no specific provision has been made by general law and which are not inconsistent with the Mississippi Constitution, the Mississippi Code, or any other statute or law of the State of Mississippi, and any such board shall likewise have the power to alter, modify and repeal such orders, resolutions or ordinances.

MISS. CODE ANN. 19-3-40(1).

Section 19-3-40(1) may be analyzed in two parts. Under the first part, a board may adopt any order, resolution or ordinance for which no specific statutory provision has been made and which are not inconsistent with the laws of the State of Mississippi. Under the second part, a board shall, in addition to adopting any orders, resolutions or ordinances, "have the power to alter, modify and repeal such orders, resolutions or ordinances." Thus, under § 19-3-40(1), a board of supervisors has the authority, i.e. jurisdiction, to alter, modify and repeal any orders, resolutions or ordinances it has previously adopted.

The Mississippi Supreme Court embraced this view in *McClanahan*, where the Lowndes County Board of Supervisors reconsidered its decision to close a county road under § 65-7-121 (the same provision at issue here) three months after its initial decision to close the road. 161 So. 3d at 1057. Citing § 19-3-40, this Court held:

We recognize that Section 11-51-75 includes no procedure authorizing motions for rehearing or reconsideration, but neither are they prohibited. [citing *Gatlin v.*

Cook, 380 So. 2d 236, 237 (Miss. 1980)]. Boards of supervisors certainly are not prohibited from reconsidering their previous decisions and issuing new decisions.[citing MISS. CODE ANN. §19-3-40]. And when they do—as they did in this case—Section 11-51-75 allows aggrieved residents to file a bill of exceptions challenging the new decision.

McClanahan, 161 So. 3d at 1057, *see also* MISS. CODE ANN. § 19-3-40(1).

Thus, *McClanahan* clearly states that a board of supervisors may, pursuant to §19-3-40(1), alter, modify or repeal its prior order dealing with a road closure under §65-7-121 absent a timely appeal and after the ten-day window for appeal has expired under §11-51-75. *Id.* Necessarily then the Board must have continuing jurisdiction over its own orders to reconsider and find that it previously was without jurisdiction.¹ Thus, the circuit court erred in holding that the Board had no authority and lacked jurisdiction to make the decision on August 15, 2016, that it was without jurisdiction on February 27, 2015, to order County Road 701A closed.

¹ As was submitted in the circuit court, Tippah County should have also been afforded judicial immunity for its August 15, 2016, decision taken in the presence of jurisdiction because in reaching its August 15, 2016, decision that it was without jurisdiction to close County Road 701A, it was required to make a discretionary judgment of findings of facts and conclusions of law which were functionally equivalent to that made by judicial officers sitting in judgment. *See Loyacono v. Ellis*, 571 So. 2d 237, 238 (Miss. 1990) (public policy mandates that a judge should have the power to make decisions without having to worry about being held liable for his actions); *National Surety Co. v. Miller*, 124 So. 251, 253 (Miss. 1929) (holding that judicial immunity applies to public boards when the matter upon which the action was taken was one belonging to the general class of cases within the cognizance of said board); *Newton Cnty v. State ex rel Dukes*, 133 So. 3d 819, 826 (Miss. Ct. App. 2013) (touchstone for judicial immunity’s application has been performance of the function of resolving disputes between parties or of authoritatively adjudicating private rights. When judicial immunity is extended to officials other than judges, it is because their judgment are “functionally comparable” to those of judges because they, too, “exercise a discretionary judgment” as part of their function.).

III. Alternatively, assuming Plaintiffs were not required to comply with § 11-51-79 and a county board of supervisors does not retain jurisdiction over its own prior order under § 19-3-40(1), the circuit court lacked jurisdiction to entertain this action, an action for inverse condemnation, under this Court's holding in *Delta MK, LLC v. Mississippi Transportation Commission*, 57 So. 3d 1284 (Miss. 2011).

Finally, though Tippah County argued to the circuit court that Plaintiffs' claims for inverse condemnation deprived the circuit court of jurisdiction, (R. 378-81), the circuit court erred in not addressing or considering this jurisdictional argument. (See R. 401-08). Under this Court's holding in *Delta MK, LLC v. Mississippi Transportation Commission*, 57 So. 3d 1284 (Miss. 2011), the Plaintiffs' takings claims, more properly styled an action for inverse condemnation, is cognizable exclusively in the special court of eminent domain. Indeed, the Plaintiffs continually referenced Mississippi's eminent domain statutes in their pleadings and briefings to the circuit court. (R. 27, 321-28, *see also* R. 405-06).

The Plaintiffs alleged the Board's decision on August 15, 2016, effected a taking of Respondent's property without due process and without due compensation. (R. 26, 321-23). They argued that upon the Board February 27, 2015, decision, Tippah County's easement to County Road 701A ceased and the interest reverted back to Respondents by operation of law. (R. 315). However, Tippah County argued the easement was never extinguished and County Road 701A was never closed, and thus never reopened as the Plaintiffs contend, because the Board found it lacked jurisdiction to abandon the road on February 27, 2016. (R. 350, 373-76), *See e.g. Bowling v. Madison Cnty Bd. of Supervisors*, 724 So. 2d 431, 435 (Miss. Ct. App. 1998) (ordinance adopted without proper notice is void). In reaching this conclusion on August 15, 2016, the Board made a finding of fact that notice to close County Road 701A was improper and a

conclusion of law that the February 27, 2015, was null and void. (R. 350). This August 15, 2016, decision, which forms the basis for this suit, was never appealed.

Without calling it such, the Plaintiffs attempted to state a claim for inverse condemnation, which is an eminent domain proceeding initiated by the property owner rather than the purported condemnor. *State v. Murphy*, 202 So. 3d 1243, 1251 (Miss. 2016). Relative to real property, condemnation is defined as "[t]he determination and declaration that certain real property (esp. land) is assigned to public use, subject to reasonable compensation." CONDEMNATION, BLACK'S LAW DICTIONARY (10th ed. 2014). A remedy for inverse condemnation is only available where private property has been actually taken for public use without formal condemnation proceedings and where it appears that there is no intention or willingness of the condemnor to bring such proceedings. *Murphy*, 202 So. 3d at 1251. No taking occurred here because the Board made an unappealed finding on August 15, 2016, that its February 27, 2015, decision was taken in the absence of jurisdiction and therefore was null and void. (R. 350). Be that as it may, the Plaintiffs instituted this action for a taking where no condemnation proceedings were instituted. Thus, the Plaintiffs' takings claim is a claim for inverse condemnation.

The circuit court shall have original jurisdiction in all actions when the principal of the amount in controversy exceeds two hundred dollars, and of all other actions and causes, matters and things arising under the constitution and laws of this state which are not exclusively cognizable in some other court, and such appellate jurisdiction as prescribed by law. MISS. CODE ANN. §9-7-81. The special court of eminent domain has exclusive jurisdiction over condemnation proceedings. *Delta MK*, 57 So. 3d at 1291. The special court of eminent domain was created by the legislature to determine the amount of just compensation due a landowner in a

condemnation proceeding. *McDonald's Corp. v. Robinson Indus., Inc.*, 592 So. 2d 927, 930 (Miss. 1991).

In *Delta MK*, an inverse condemnation case, this Court made clear the jurisdiction of the special court of eminent domain. 57 So. 3d at 1291. There, this Court held the special court of eminent domain was the proper court in which to hear an inverse condemnation action. *Id.* The plaintiff in that case filed an inverse condemnation action in circuit court against the Mississippi Transportation Commission ("MTC") and later amended its Complaint to assert claims for due process and civil rights violations. *Id.* at 1286. MTC filed a motion to dismiss, and the circuit judge transferred the case to the special court of eminent domain finding he lacked jurisdiction over the inverse condemnation action. *Id.* at 1287. On appeal from the special court's granting of summary judgment to MTC, this Court affirmed the eminent domain judge's judicial finding that he did not have jurisdiction to consider the due process or civil rights claims. *Id.* at 1291. This Court clarified its holding in *McDonald's Corp.* that "when a special court of eminent domain has subject matter jurisdiction of a condemnation proceeding, it may exercise pendent jurisdiction over any question of title which may arise in the proceedings." *Id.* This Court remanded the case back to the special court of eminent domain to properly convert MTC's motion to dismiss into a motion for summary judgment. *Id.*

Under *Delta MK*, if, as the circuit court found and as was alleged by Plaintiffs (R. 27 & 406), a taking occurred, then the circuit court lacked jurisdiction to consider this case. *See* 57 So. 3d at 1291. However, no taking occurred here because the Board found that notice to close County Road 701A was improper. (R. 350). Still, in the special court of eminent domain, Plaintiffs would be required to show that a taking actually occurred and would still be required to

address the first two questions presented here. Thus, Tippah County submits this question in the alternative as they believe the first and second questions are dispositive of this appeal and of this case.

VI. Conclusion

The previous opinions of this Court have effectively addressed each of the issues submitted for review herein. As a matter of law, the Circuit Court erred when it held the Plaintiffs were not required to appeal the Board's August 15, 2016, decision through a Bill of Exceptions pursuant to § 11-51-75. *See e.g. City of Jackson*, 242 So. 3d at 17, , 841 So. 2d at 145. The Circuit Court further erred when it held as a matter of law, and contrary to this Court's decision in *McClanahan*, 161 So. 3d at 1057, that the Board lacked jurisdiction to reconsider its previous order. It is respectfully requested that the trial court's decision be reversed, and that this Court remand this matter to the trial court with instructions to dismiss the instant matter or render judgment in this case dismissing this case with prejudice.

RESPECTFULLY SUBMITTED this the 13th day of February, 2019.

TIPPAH COUNTY, MISSISSIPPI
Appellant

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CERTIFICATE OF SERVICE

I, __, Attorney for Tippah County, Mississippi, do hereby certify that I have this date filed a true and correct copy of the foregoing *Brief of Appellant* with the electronic filing system of the Court, which gave notice to the following::

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