



to implement effective Best Management Practices for the control of pollutants in construction storm-water runoff. Subsequent to notification of such deficiencies, the defendants have taken some corrective steps, but the court finds that runoff continues to be excessive and that the plaintiffs are suffering immediate and irreparable injury as a result thereof.

The court also finds that the other grounds needed for the issuance of a preliminary injunction have been established. See *Bloom v. Ray, Oliver & Ward*, 729 So.2d 877 (Ala.Civ.App.1999). Because of the significant investment that the defendants have in the subject chicken houses, the court believes it appropriate before issuing an injunction to give the defendants an opportunity to eliminate the nuisance.

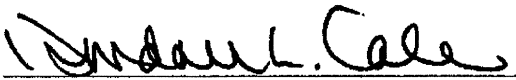
Accordingly, it is ADJUDGED that upon the posting of security by the plaintiffs in an amount to be hereafter determined, a preliminary injunction shall issue enjoining the operation of the subject chicken houses, *unless* the defendants implement an adequate plan designed to eliminate the nuisance.

The court will conduct a hearing on June 8, 2006, at 10 a.m., at which time the defendants shall be afforded an opportunity to present to the court a proposed plan by a qualified engineer for the elimination of the nuisance. If the court approves the plan, a time limit will be established for its implementation. If the court rejects the plan, the defendants will be subject to having the injunction issue.

Other matters are reserved pending further order of the court.

DATED May 9, 2006.

**FILED**  
MAY 09 2006  
CIRCUIT CLERK  
DEKALB COUNTY

  
Randall L. Cole  
CIRCUIT JUDGE

COPIES TO:

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Plaintiff(s) Barbara Goodwin, et al

Defendant(s) Gary Gray and Patsy Gray,  
individually and d/b/a Gray Farm d/b/a P.J.'s  
Poultry Playhouse,

Larry Gray, individually and d/b/a Larry Gray  
Farms,

City of Mentone, et al,

**FILED**  
MAY 09 2006  
CIRCUIT CLERK  
DEKALB COUNTY

IN THE CIRCUIT COURT OF DEKALB COUNTY, ALABAMA

BARBARA GOODWIN, et al. \*  
PLAINTIFFS \* CV-06-82  
VS. \*  
LARRY GRAY, et. al. \*  
DEFENDANTS \*

**FILED**  
MAY 28 2006  
CIRCUIT CLERK  
DEKALB COUNTY

MOTION TO RECONSIDER

Comes now the defendants by and through the undersigned attorneys and moves this honorable court to reconsider its order entered on May 9, 2006 based upon following grounds:

1. The court found the plaintiffs had suffered immediate and irreparable harm, and that the plaintiffs had met all of the requirements necessary for the issuance of a preliminary injunction. In support thereof the court cited Bloom v. Ray, Oliver & Ward that states the following rule:

In order for a trial court to properly grant the motion for a preliminary injunction, the party seeking the injunction must show *all* of the following: that the party would suffer immediate and irreparable injury without the injunction; that the party has no adequate remedy at law; that the party has at least a reasonable chance of prevailing on the merits of the case; and that the hardship the injunction would cause to the enjoined party would not unreasonably outweigh the benefit to the party seeking the injunction. **Bloom v. Ray, Oliver & Ward**, 729 So.2d 877 (Ala.Civ.App. 1999), *citing* Perley v. Tapscan, Inc., 646 So.2d 585 (Ala.1994); Martin v. First Federal Sav. & Loan Ass'n of Andalusia, 559 So.2d 1075 (Ala.1990).

2. "...[T]he party would suffer immediate and irreparable injury without the injunction." *Id.* The plaintiffs did not meet first prong of the test because there was no evidence offered to prove that the injunction

would stop the injury. The plaintiffs began the hearing by requesting the court to shut down the Grays' chicken house operations. Mr. Dodd specifically requested that the court enter an order to remove all chickens if any and/or to prevent the delivery of more chickens to the operation. However, no evidence was offered to show that this remedy would solve the alleged problem of runoff. The entirety of the testimony consisted of the harm caused by construction run-off, which will be abated now that construction is complete. If the chicken houses are shut down, the structures and the pads upon which they are built will remain. There could not have been any pollutants caused by chickens coming from Larry Gray's new houses because they had not been delivered. Furthermore, there was no proof offered by the plaintiffs to show pollution coming from Gary Gray's operation.


3. No evidence was submitted by the plaintiffs to show that any more pollutants or water are leaving the Gray property in April of 2006, than were leaving the property in April of 2005. . In fact, Dr. Lowman testified that he had to pick up rocks in his yard after hard rains to mow the yard safely. Dr. Lowman also testified that the rocks were washed into his yard prior to 2004, the last time he was at the property.
4. Plaintiffs have stipulated that the 2 old chicken houses are not at issue in this case, nor has any relief been sought concerning the defendants' cattle and horses. The plaintiffs' allegations and assertions concerning fecal

coliform are a mere pretense to try to improperly control the defendants' use of their property.

5. **"...[T]he hardship the injunction would cause to the enjoined party would not unreasonably outweigh the benefit to the party seeking the injunction."** *Id.* Ordering the Grays to remove their chickens or prevent new chickens from being delivered will not serve any purpose, but it will cause the Grays to be insolvent. If this court issues an injunction shutting down the Grays' chicken houses, the Grays will not have sufficient income to pay their bank loans which are secured by their families' homes. This means that Charles Francis Gray Jr. (Father), Mary Jane Gray (Mother), Gary Gray, Patsy Gray, Shelly Gray (daughter of Gary and Patsy), and Joseph Gray (son of Gary and Patsy) will have no home to go back to, and no funds to buy a new place of their own. Furthermore, plaintiffs have acknowledged the value and benefit of poultry farming in their Complaint. " [Poultry farming] is a vital component of Alabama agriculture, and a necessary component of America's food industry." (page 2 of Complaint).
6. The little testimony concerning the alleged harm offered by the plaintiffs was that the sight of the chicken houses distresses them, and there has been some sediment or silt deposited on their land. Each and every plaintiff was unable to state with any degree of certainty that the silt on their property and the view of the chicken houses depreciated their property at all. Each plaintiff testified that they had no intention of selling

their land or houses. Dr. Lowman acknowledged that chert and rocks from Gray Road had regularly washed on to his property well before construction of the new chicken houses began. The other plaintiffs' representatives could offer no evidence, test results or other data to show any change in the water flow or condition of their land. The plaintiffs' subjective testimony only established that the run-off or silt was worse in their opinion. This opinion evidence is highly suspect in that Dr. Lowman has not stayed at the property in over two years, Mrs. Goodwin has not lived on the property of her mother for decades, and, Mrs. Nicely has never lived on the Trust's property. The sum total of their damage is the presence of silt in the natural water course, where storm water has always flowed.

7. There has been no irreparable harm caused to the Plaintiffs.
8. WHEREFORE THE PREMISES CONSIDERED, the defendants would request this court to grant this motion.

  
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**FILED**

**MAY 23 2006**

**CIRCUIT CLERK  
DeKALB COUNTY**

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the Defendant's motion to reconsider upon counsel for the Plaintiff, Jared Mitchem, Esq. and E. Allen Dodd, Esq. By placing a copy of same in ~~the~~ <sup>their</sup> box at the Dekalb County Courthouse on this 23<sup>rd</sup> day of May, 2006.



Shaunathan C. Bell

**FILED**

**MAY 23 2006**

**CIRCUIT CLERK  
DeKALB COUNTY**