IN THE SUPREME COURT OF MISSISSIPPI

BILLY J. FIELDS — **APPELLANT**

v. — **No. 2008-CA-00316**

CITY OF CLARKSDALE, MISSISSIPPI — **APPELLEE**

BRIEF OF APPELLANT BILLY J. FIELDS

On Appeal from the
Circuit Court of Coahoma County
No. 14-CI-07-0105

ORAL ARGUMENT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Miss. R. App. P. 28(a)(1), the undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Captain Billy J. Fields, *Appellant*
2. City of Clarksdale, Mississippi, *Appellee*
3. The Honorable Kenneth L. Thomas,
   Senior Circuit Judge, Coahoma County Circuit Court
4. Curtis D. Boschert, *Counsel for Appellee City of Clarksdale*
5. William Gresham, *Counsel for Clarksdale Civil Service Commission*
6. Derek D. Hopson, Sr., *Trial Counsel for Appellant*
7. David Neil McCarty, *Lead Appellate Counsel for Appellant*
8. Drew M. Martin, *Appellate Counsel for Appellant*

So CERTIFIED, this the 26 day of May, 2009.

Respectfully submitted,

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Attorney for Appellant Billy J. Fields

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Statement of the Issues

This appeal presents three main questions:

First, is an appellant denied due process when a circuit court dismisses an appeal from a civil service commission without providing him notice of a deficiency under the Mississippi Rules of Appellate Procedure, or an opportunity to cure the deficiency?

Second, is a trial court's mandatory dismissal with prejudice of an appeal an overly harsh sanction for failure to provide a transcript?

Third, may a party receive an advantage in litigation when it violates state law?

Statement of the Case

This case involves a fire department captain who was dismissed from his position in Clarksdale, Mississippi. When he tried to appeal the decision of the Civil Service Commission to the circuit court, the City of Clarksdale refused to provide him with a transcript, as required under state statute.

At that point the firefighter requested that the trial court force the City to pay for the transcript. While the trial court found that it was indeed the burden of the City to carry all costs of the transcript, he ruled that the firefighter had waited too long to seek the assistance of the court. The trial court dismissed the firefighter's appeal as abandoned and subject to mandatory dismissal, as he had waited three weeks to avail himself of the court. The firefighter had never received any notice of a deficiency in his appeal.

Aggrieved, he appeals that decision.

Procedural History and Relevant Facts

The facts in this appeal are not in dispute. Captain Billy J. Fields is a firefighter in the City of Clarksdale with twenty years of experience. R. at 3. In 2007, he was terminated from his position after the Clarksdale Civil Service Commission ("Commission") found that he had

disobeyed an order from his direct superior, Fire Chief Mike Robinson. R. at 10. Captain Fields fought the termination, arguing that he was not terminated in good faith or for good cause. R. at 10. The City of Clarksdale ("City") argued there were no defects in Captain Fields' termination.

The Commission made its ruling on August 9, 2007. R. at 13. Captain Fields' attorney, Mr. Derek D. Hopson, Sr., timely filed a notice of appeal to the Coahoma Circuit Court within thirty days, on September 7, 2007. R. at 2-5. A little less than three weeks later, the Commission's attorney advised Captain Fields that the transcript before the Commission, required for purposes of the appeal to the circuit court, would cost an estimated $1,000.00. R. at 25. The City took the position that "[g]enerally, the Appellant is responsible for the cost of the transcript of the proceeding being appealed." R. at 25. The Commission requested that Captain fields transmit the money so that the transcript could be prepared. R. at 25.

Soon afterwards, counsel for Captain Fields filed a "Motion for City to Pay Cost of Transcript," arguing that state statute required the Commission to pay the costs of the transcript, and attaching a proposed order which set out such a ruling. R. at 14-19. The City opposed the motion, and while it conceded that the Notice of Appeal was timely filed, vehemently denied that state law placed a burden on it to pay the costs of the transcript. R. at 20-24. The City requested that Captain Fields shoulder the burden of costs. R. at 20-24. Further, the City argued that the appeal should be dismissed as Captain "Fields wait[ed] . . . to request Court assistance in preparing the transcript, which is over forty (40) days after filing his appeal." R. at 23. The City did not file a formal Motion to Dismiss or any other pleading, nor does the Docket reflect that Captain Fields ever received any notice of a deficiency regarding his appeal, as required under Mississippi Rule of Appellate Procedure 2(a)(2). R. at 1.

The Coahoma Circuit Court held a hearing over the matter. The Commission argued that it was "an unfunded entity," and "just . . . has no funds to pay for the transcript." T. at 4.

Accordingly, it sought to be relieved of the burden of having to pay for any transcript. T. at 4. The City argued that, despite state law mandating the City or its Commission to pay for the transcript for purposes of appeal, there seemed to be no case law on the subject, and that a local rule seemed to say that the person seeking the appeal should bear the costs. T. at 4-5.

Ultimately the trial court rejected the contentions of the City and its Commission, ruling that state law did require those entities to bear the costs of the transcript. R. at 39. The trial court further found that the appeal had been timely filed. R. at 38. Yet while finding that the City and its Commission had failed to follow state law, and that it was required to pay the transcript, the trial court went further and determined that Captain Fields was too late to request assistance. T. at 28. While Captain Fields did "not bear that burden" of payment for the transcript, he "did not act timely" in seeking the court's assistance to force the City to comply with state law. T. at 28.

The trial court ruled that Uniform Circuit and County Court Rule 5.05 was "controlling" over the issue, and quoting the rule, that Captain Fields failed "to request the assistance of the court in compelling [the production of the transcript] within thirty (30) days of the filing of the written notice of appeal . . . ." R. at 39. The trial court examined the undisputed facts and found that Captain Fields:

> . . . knew on September 26, 2007 that he needed to seek the assistance of this Court in having the record . . . filed . . . but waited until October 18, 2007, some 23 days later, and 42 days after filing his notice of appeal, before bringing this matter before this Court. The Court finds that Fields' failure to timely seek the assistance of this Court constitutes an abandonment of his appeal and accordingly Fields' appeal is dismissed with prejudice.

R. at 39. In other words, the trial court found that waiting 23 days to seek its assistance was an "abandonment" of the appeal that required a mandatory dismissal with prejudice.

Aggrieved by this decision, Captain Fields filed the instant appeal.

Standards of Review

"The power to dismiss for failure to prosecute is inherent in any court of law or equity, being a means necessary to the orderly expedition of justice and the court's control of its own docket." *Walker v. Parnell*, 566 So.2d 1213, 1216 (Miss. 1990). This decision is reviewed like a motion to dismiss, "subject to the sound discretion of the trial court," which can be "reverse[d] only where there has been an abuse of that judicial discretion." *Carter v. Clegg*, 557 So.2d 1187, 1190 (Miss. 1990).

Summary of the Argument

Captain Fields was denied due process when the Coahoma Circuit Court dismissed his appeal for abandonment. First, the Mississippi Rules of Appellate Procedure govern all appeals. While the trial judge treated the dismissal as mandatory is nature, it was discretionary per the Rules. As it was discretionary, Captain Fields should have received a notice of deficiency under MRAP 2(a)(2). While this Rule requires that he receive 14 days in which to correct any alleged flaw in his appeal, he was given no such notice nor such time for correction.

In addition, the trial court's mandatory dismissal with prejudice of the appeal was too harsh a sanction.

Last, the City unjustly received a benefit in litigation by violating state law when it refused to carry the costs of the transcript, and Captain Fields was not the party in default for purposes of the Rule.

Argument

I. Captain Fields Was Denied Due Process when the Circuit Court Improperly Dismissed his Appeal.

The trial court abused its discretion by treating the situation as one requiring mandatory dismissal, while under the Mississippi Rules of Appellate Procedure and the Uniform Rules of County and Chancery Court it can only be discretionary. Captain Fields never received notice of

any deficiency as required under the Mississippi Rules of Appellate Procedure, and any deficiency was a result of the City's refusal to comply with state law. Accordingly, the dismissal of his appeal with prejudice was an abuse of discretion by the trial court that violated Captain Fields' right to due process. Further, the dismissal was too harsh a remedy.

A. The Mississippi Rules of Appellate Procedure Apply to All Appeals, and It Was an Abuse of Discretion to Ignore Them.

The Mississippi Rules of Appellate Procedure govern all appeals, whether to the Supreme Court from a circuit court, or appeals from county court to circuit court, or from civil commissions and agency decisions to circuit court. *See, e.g., American Investors, Inc. v. King*, 733 So.2d 830, 832 (Miss. 1999) (MRAP governs appeals from county court to civil court); *Van Meter v. Alford*, 774 So.2d 430, 432 (Miss. 2000) (applying *King* and noting that it "specifically held that MRAP 2(a)(2) applies to appeals from county court to circuit court"); *Wheeler v. Miss. Dept. of Environmental Quality Permit Bd.* 856 So.2d 700, 704 (Miss. Ct. App. 2003) (MRAP "applicable in appeals from agency decisions to circuit court"); *Zurich American Ins. Co. of Ill. v. Beasley Contracting Co., Inc.*, 779 So.2d 1132, 1134 (Miss. Ct. App. 2000) (use of MRAP in appealing commission decisions to circuit court).

As the Court of Appeals has noted, the state Supreme Court has issued a clear "directive to the circuit and chancery courts, when sitting as appellate courts, to look to the Mississippi Rules of Appellate Procedure for direction." *Adams v. Mississippi State Oil & Gas Bd.*, 854 So.2d 7, 10 (Miss. Ct. App. 2003).[1]

In the case at hand, the Coahoma Circuit Court was admittedly sitting as an appellate court over the City and the Commission. The trial court did not acknowledge or even cite to

[1] Additionally, the "Order Adopting the Mississippi Rules of Appellate Procedure," found at the beginning of MRAP, explicitly states the Rules are to "govern[] all proceedings in the Mississippi Supreme Court and the Court of Appeals of the State of Mississippi, and the trial courts of this State to the extent provided in the Rules."

MRAP's controlling procedural rules in its two-page Order. Instead, it based its ruling on Uniform Circuit and County Court Rule 5.05, which addresses purported "abandonment" of an appeal. As held in the cases above, the Mississippi Rules of Appellate Procedure apply, and failure to use them to analyze Captain Fields' appeal was an abuse of discretion by the trial court.

As MRAP 2 controls all discussion regarding this matter, and as the trial court did not employ or rely upon them in addressing Captain Fields' appeal, this case should be reversed and remanded for further proceedings in accordance with MRAP.

B. The Trial Court Abused Its Discretion by Treating the Appeal as One Requiring Mandatory Dismissal Rather than Permissive.

The trial court abused its discretion when it deemed Captain Fields' appeal "abandoned" and dismissed it with prejudice, as it treated any flaws in the appeal as requiring mandatory dismissal. Under Rule 2, there are two methods of dismissal: mandatory and discretionary. MRAP 2(a)(2). The only situation under the plain face of the Rule requiring mandatory dismissal is "if the notice of appeal was not timely filed pursuant to Rules 4 or 5." MRAP 2(a)(2); *see also Wheeler*, 856 So.2d at 704 (where Judge Southwick, writing for a unanimous Court of Appeals, held that "[u]nder the appellate rules of procedure, the *only* mandatory dismissal is for failing to timely file notice of appeal," and "*[a]ll other* failings are reviewed as potential discretionary dismissals") (emphases added).

In the case at hand, the trial court found that the notice of appeal was timely filed, and no party has argued otherwise. R. at 38. Yet the trial court treated the dismissal of Captain Fields' appeal as mandatory in nature. In doing so, the trial court relied on Uniform Rule of Circuit and County Court 5.05, which is complementary to the Rules of Appellate Procedure. The Uniform Rule holds that "[f]ailure to file the record with the court clerk or to request assistance of the court in compelling the same within thirty (30) days of the filing of the written notice of an

appeal *may* be deemed an abandonment of the appeal and the court *may* dismiss the same with costs to the appealing party or parties." UCCCR 5.05 (emphases added).

This Rule in no way conflicts with MRAP; on its face it echoes the discretionary powers embodied in MRAP 2(a)(2) by repeated use of the word "may." As noted above, any examination of alleged flaws in Captain Fields' appeal must be done under the "discretionary" component of MRAP 2(a)(2), as the word "may" is used, as opposed to "shall," and there was concededly no issue regarding timely filing a notice of appeal.

Accordingly, it was an abuse of discretion to treat Captain Fields' appeal as one subject to mandatory dismissal when it was permissive in nature, and this case should be reversed and remanded for a full hearing in the circuit court.

C. To Safeguard Due Process, Rule 2(a)(2) Requires Notification Before Dismissal, and Failure to Provide Notification Requires Reversal and Remand.

As Captain Fields' appeal was timely, it cannot be mandatorily dismissed, and any analysis must therefore proceed under the "discretionary dismissal" part of Rule 2. This provision includes procedural safeguards to protect due process, and failure to follow these guidelines is an abuse of discretion. In the case at hand, Captain Fields was denied due process because the Rule was not followed correctly.

The discretionary dismissal portion of the Rule allows an appeal to be dismissed for two reasons: "when the court determines that there is an obvious failure to prosecute an appeal; or . . . when a party fails to comply substantially with these rules." At that point, the Rule sets forth the procedure, which has been applied to all courts: "When [a] court, on its own motion or on motion of a party, determines that dismissal may be warranted under this Rule 2(a)(2), the clerk of the [determining court] shall give written notice to the party in default, apprising the party of the nature of the deficiency." Only after the "party in default" is provided 14 days to cure their error can the appeal be dismissed. MRAP 2(a)(2). The defaulting party "has the burden to

correct promptly any deficiency or to see that the default is corrected by the appropriate official." MRAP 2(a)(2).

Rule 2 is no mere procedural hurdle for trial courts or circuit clerks: it is a key requirement in providing due process to appellants. *See King*, 733 So.2d at 832 (trial court denied appellant "due process" when failing to use MRAP); *Johnson v. Brooks*, 915 So.2d 536, 538 (Miss. Ct. App. 2005) (appellant "deprived of due process rights" when "the circuit clerk did not give [him] the required notice of deficiency"). In *Van Meter*, this Court was crystal clear: a party "was therefore deprived of due process when his appeal was dismissed because he was not given an official notice of deficiencies in his appeal by the circuit clerk." 774 So.2d at 432. Further, the Court ruled that "Rule 2(a)(2) *mandates* that, after a motion to dismiss has been filed, the court clerk (the circuit clerk in this instance) officially notify an appellant of deficiencies in his appeal and that the appellant be given fourteen (14) days therefrom to correct any deficiencies." *Id.* (emphasis added).

The case law noted above has been uniform in protecting due process rights through the appellate process. *See also Thomas v. Five County Child Dev. Program, Inc.*, 958 So.2d 247, 250 (Miss. Ct. App. 2007) (party "was entitled to written notice from the clerk of the deficiencies in the appeal and a fourteen day period in which to cure any deficiencies"); *King*, 733 So.2d at 832 (it was "apparent that the circuit court erred in dismissing [a party's] appeal without giving prior written notice to [the party] of its 'deficiency' . . . and without giving [the party] 14 days to correct this deficiency").

Indeed, the Mississippi Supreme Court has upheld the due process protections of MRAP and *Van Meter* in the past forty days. In *Adams v. A & C Entertainment*, a case decided April 16, 2009, the Court again cited *Van Meter* and Rule 2(a)(2) in finding that a party "was entitled to notice of the deficiencies in his brief and fourteen days from that notice to correct the

deficiencies." No. 2007-CA-01774-SCT, 2009 WL 1015042, *2 (Miss. April 16, 2009). The Court reversed and remanded, instructing the circuit court to "first issue[] a Mississippi Rule of Appellate Procedure 2(a)(2) notice to Adams, giving him specific notice of the deficiencies of his appeal and allowing him fourteen days from the date of the notice to cure said deficiencies." *Id.* at *3.

The case at hand is firmly in the tradition of *Van Meter* and its progeny, including last month's *Adams*. The docket and the Record reflect that Captain Fields was never given any official notice of any deficiency in his appeal, which is required when a discretionary dismissal is at stake. At the very end of the City's response to the motion to pay costs, it requested that the appeal should be dismissed as Captain "Fields wait[ed] . . . to request Court assistance in preparing the transcript, which is over forty (40) days after filing his appeal." The circuit clerk still did not provide notice to Captain Fields that his appeal was in danger of dismissal. Accordingly, Captain Fields was denied due process under the provisions of Rule 2(a)(2) and ample Mississippi case law.

Nor does the fact that the City included language requesting dismissal fulfill the due process safeguards of Rule 2(a)(2), as a "motion to dismiss cannot be substituted for an official notice of deficiencies from the court clerk." *Van Meter*, 774 So.2d at 432. "Even where a party has moved to dismiss, the plain language of the rule requires a notice from the clerk of the deficiency and a fourteen day opportunity to cure the deficiency." *Id.*[2]

If a trial court perceives that a party has abandoned an appeal, whether through failure to transmit a record or otherwise, it must then issue the Rule 2(a)(2) deficiency notice and give the appellant time to correct any error or perceived flaw. Here, Captain Fields filed a motion before

[2] As noted above, the City never filed a formal Motion to Dismiss, only including a single-line request in its *Response to the Motion for City to Pay Cost of Transcript* asking "[t]hat after a hearing on this matter, the Court dismiss Fields' appeal."

the trial court to compel the City's compliance barely three weeks after it refused to provide the record.[3]

For a decade now, this Court and the Court of Appeals have required the trial courts' compliance with the Rules of Appellate Procedure, specifically regarding Rule 2(a)(2) notice in the event of a deficiency. The reasoning is simple: failure to do so creates a due process violation. The failure to notify Captain Fields of a deficiency in his appeal violates the procedural safeguards of MRAP 2(a)(2). It was an abuse of discretion for the trial court to treat Captain Fields' appeal as a creature subject to mandatory dismissal, and it was an abuse of discretion to fail to provide Captain Fields with notice of any deficiency and the opportunity to correct it.

In accord with the Rule, and with Mississippi case law, his case should be reversed and "remanded to the . . . Circuit Court with instructions that the appropriate notice be issued . . . informing him of the specific deficiencies in the appeal and giving him 14 days to cure said deficiencies." *Van Meter*, 774 So.2d at 432, 433.

II. The Trial Court's Mandatory Dismissal with Prejudice Was Too Harsh a Sanction.

In the alternative, even if this Court finds that Captain Fields was somehow deficient in pursuing his appeal, the trial court's dismissal with prejudice was too harsh a sanction.

In *Van Meter*, this Court made clear that "deficiencies [in an appeal] do not necessarily mandate a dismissal," where an appellant "was delinquent in filing a designation of record, an estimation of costs, and a Rule 11(b)(1) certificate of compliance." 774 So.2d at 432. Yet this

[3] In the only reported case applying UCCCR 5.05, the rule relied upon by the trial court, the Court of Appeals upheld a dismissal for abandonment when an attorney "failed to take any action for approximately eight months after the notice of appeal was filed," and never applied to the circuit court for assistance in obtaining the transcript. *Stuart v. PERS of Miss.*, 799 So.2d 886, 890 (Miss. Ct. App. 2001). The eight months' delay in *Stuart* is distinguishable from the three weeks in the instant case, as is the active work by Captain Fields' trial attorney. Further, it appears that in *Stuart* no Rule 2(a)(2) notice of deficiency was sent by the circuit court, but this issue was not raised by the Appellant.

Court ruled that "[d]ismissal is appropriate only where there is a clear record of delay or contumacious conduct and lesser sanctions would not serve the best interests of justice." *Id.* at 433 (internal quotations, citation, and alteration omitted).

"This is so," the Court ruled, "because dismissal with prejudice is an extreme and harsh sanction that deprives a litigant of the opportunity to pursue his claim, and any dismissals with prejudice are reserved for the most egregious cases." *Id.* (internal quotations and citation omitted). Accordingly, the "Court f[ound] that the dismissal of Van Meter's appeal was too harsh a sanction," and reversed and remanded for Rule 2(a)(2) notice and 14 days to cure. *Id.* at 433.

The case at hand is analogous. Captain Fields' appeal was dismissed after the City unlawfully refused to prepare a transcript of his hearing before the Commission. After deeming the matter "abandoned," the trial court *sua sponte* declared that the appeal was dismissed with prejudice. As in *Van Meter*, "[t]here is no evidence in the record that the deficiencies in [the] appeal were the result of clear delay or contumacious conduct." *Id.* at 433.

Accordingly, the dismissal with prejudice was too harsh a result, and this case should be reversed and remanded to consider lesser or no sanctions.

III. The City Unjustly Received an Advantage in Litigation for Violating State Law.

Additionally, the dismissal with prejudice of Captain Fields' appeal was an abuse of discretion because he was not the actual party in default, and the City received an unjust advantage in litigation for violating state law. As the trial court ultimately ruled, and the City has conceded for purposes of appeal, it was the City's burden to pay for the costs of the Commission transcript.[4] According to state statute, a civil service "commission *shall*, within thirty (30) days after the filing of such notice [of appeal], make, certify and file such transcript

[4] The City declined to file a Cross-Appeal, and therefore this issue is not before the Court. The trial court urged the City to appeal the ruling if it desired. R. at 31. It chose not to do so.

with such court." Miss. Code Ann. § 21-31-71 (emphasis added). Despite the efforts of the City and its Commission to avoid complying with state law because the Commission is "unfunded," the duty on the City is absolute.

While it is a concept springing from our courts of equity, the maxim of "clean hands" applies. This means that "no person as a complaining party can have the aid of a court . . . when his conduct with respect to the transaction in question has been characterized by wilful inequity." *Brennan v. Brennan*, 605 So.2d 749, 752 (Miss. 1992) (quoting V.A. Griffith, *Mississippi Chancery Practice,* § 42 (2d ed. 1950)). In such situations "the doors of the court will be shut against him in limine," at the very threshold; "the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy." *Id.* (quoting Vol. 1 *Pomeroy's Equity Jurisprudence,* 4th Ed., Section 397, page 738). Quoting again the learned Judge Griffith and his treatise on chancery, this Court has held that the maxim may be invoked sua sponte by a court, as "[i]t is the duty of the Court to apply it of its own motion when it becomes evident that the facts are such that they call for the application of the maxim." *Thigpen v. Kennedy*, 238 So.2d 744, 746-47 (Miss. 1970); *see also Brennan*, 605 So.2d at 752 ("The maxim should be applied by the court sua sponte where it is shown to be applicable").

As this Court has justly held, "it is one of the oldest maxims of the law that no man shall, in a court of justice, take an advantage which has his own wrong as a foundation for that advantage." *Estate of Dykes v. Estate of Williams*, 864 So.2d 926, 932 (Miss. 2003) (internal citations, quotations, and alteration omitted). Nothing requires that "the conduct [is] of such a nature as to be criminal or justify any legal proceedings, but there must simply be a wilful act concerning the cause of action which can be said to transgress equitable standards of conduct." *Id.* (internal citations, quotations, and alteration omitted).

Captain Fields could never have been in default regarding his appeal, because the state statute places all burden of producing and paying for the transcript exclusively on the City and its Commission. The City refused deep into the timeline of the appeal to provide the transcript in accordance with state law, and therefore forced Captain Fields to avail himself of the circuit court for relief. Once he had done so, the City and its Commission vehemently fought against the clear wording of the statute, and even had the gall to proclaim that Captain Fields' appeal should be dismissed for lack of prosecution—even though it *could not be* prosecuted without the transcript the City unlawfully refused to produce. For its violation of state law, the City was rewarded with a termination of Captain Fields' appeal and a complete victory in the circuit court.

This case is covered with the fingerprints of the City's unclean hands. The City gained a massive litigation advantage by actually refusing to comply with state law, and then demanding that Captain Fields be required to produce the transcript. As a result Captain Fields suffered a blow to the due process to which he is entitled and the loss of the property value in his case. For simple reasons of equity and public policy the actions of the City cannot be countenanced. *See generally Morrissey v. Bologna*, 240 Miss. 284, 297, 123 So.2d 537, 543 (Miss. 1960) ("the courts may interfere from motives of public policy"); *Simmons v. Simmons*, 724 So.2d 1054, 1060 (Miss. Ct. App. 1998) (courts can refrain from assisting a party "for reasons of public policy").

As the City acted with unclean hands and its actions in violating state law damage public policy, this Court should reverse and remand for a full appeal in the Circuit Court of Coahoma County. No party should be allowed a victory or safe harbor in litigation when its actions violate state law. Further, the dismissal of Captain Fields' appeal for the failure of the City to comply with state law was an abuse of discretion, which mandates that this case be reversed and remanded to the Circuit Court for further proceedings.

Conclusion

Captain Fields was denied due process when the trial court treated his appeal as one subject to mandatory dismissal. He was further denied due process when he was never issued notice of a deficiency or the opportunity to cure it under MRAP 2(a)(2). Nor was Captain Fields the party in default in the first place, and therefore should not be put into a position that it was his appeal at risk. The trial court's mandatory dismissal with prejudice was too harsh a sanction. Last, the City unjustly received an advantage in its litigation with Captain Fields when it violated state law and was rewarded with a dismissed case.

Captain Fields would respectfully request that the Court consider the merits of MRAP 2(b), which provide that the Supreme Court may "impose such sanctions as may be appropriate" when Rule 2 is not honored, as Captain Fields has been forced to appeal this issue after a denial of his due process rights.

In light of the foregoing abuses of discretion by the trial court, and under the guidance of ample Mississippi precedent, this case should be reversed and remanded for a full appeal in the Circuit Court of Coahoma County.

Filed this the 26 day of May, 2009.

Respectfully Submitted,

Attorneys for Appellant Billy J. Fields

David Neil McCarty, MSB No. [redacted]

Drew M. Martin, MSB No [redacted]

CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that I have served by United States mail, postage prepaid, or via hand delivery, a true and correct copy of the above and foregoing document, to the following persons at these addresses:

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THIS, the 20 day of May, 2009.

DAVID NEIL McCARTY, ESQ.