

SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ANTHONY J. HUDSON

APPELLANT

V.

CASE NO. 2010-CP-01307

JONES COUNTY BOARD OF SUPERVISORS

APPELLEE

APPEAL FROM JONES COUNTY CIRCUIT COURT
SECOND JUDICIAL DISTRICT
HONORABLE ALBERT B. SMITH, III, SPECIAL JUDGE

BRIEF FOR APPELLEE

ORAL ARGUMENT NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for Appellee 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 disqualifications or recusal.

1. Anthony J. Hudson, Appellant – *Pro Se*
2. Jones County Board of Supervisors – Appellee
3. M. Wayne Thompson, Esq.
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Attorney for Appellee, Jones County Board of Supervisors
4. Honorable Albert B. Smith, III
Special Circuit Court Judge
Second Judicial District of Jones County, Mississippi

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BRIEF FOR APPELLEE

Comes now Appellee and files its Brief in the above-styled appeal.

I. STATEMENT OF THE ISSUE

The issue is:

Whether or not the Circuit Court was correct in dismissing Hudson's appeal.

II. STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal by Anthony J. Hudson from an order of the Circuit Court of the Second Judicial District of Jones County, Mississippi, dated August 6, 2010, (R. 101-103; RE- 1-3) dismissing the appeal to Circuit Court of a decision by the Defendant, Jones County Board of Supervisors. The case filed in the lower court concerns the appeal of a decision by the Jones County Board of Supervisors to locate a new building for the Jones County Department of Human Services (DHS) outside the city of Laurel and inside the city limits of Ellisville. In its Order, the Circuit Court reasoned that Mr. Hudson did not have standing in that Hudson did not allege an injury separate and apart from that suffered by other citizens of Jones County, nor does he assert a colorable interest different from the general public. Also, Hudson did not allege any representative capacity for any aggrieved citizens of Jones County. However, the Court went further and found that the appeal of Mr. Hudson should be dismissed pursuant to M.R.C.P.

12(b)(6) as failing to state a claim in that there is no requirement of the county to build a building for the Department of Human Services, but instead grants the board of supervisors the discretion to expend and appropriate funds for the purpose of obtaining office space for the local DHS. The Court concluded by ruling that the County was within its power and did not violate any statutory or constitutional right of Mr. Hudson by building a new office building for the local offices of the Department of Human Services in Ellisville instead of Laurel.

B. Course of Proceedings

On March 17, 2010, Anthony J. Hudson filed a Notice of Appeal to the Circuit Court of the decision by the Jones County Board of Supervisors to build a new building for the Jones County Board of Supervisors outside the city of Laurel entitled "Anthony J. Hudson vs. Jones County Board of Supervisors, Cause No. 2010-28-CV3 (R. 3; RE 4). Mr. Hudson proceeded *pro se*. In addition, on March 17, 2010, Hudson filed his Statement of the Issue on Appeal (R. 4; RE- 5).

On April 16, 2010 the Jones County Board of Supervisors filed its Bill of Exceptions with Amendments (R. 68-75; 20-67; RE- 6-61).

On July 6, 2010, Jones County Board of Supervisors by and through their attorney, filed a Motion to Dismiss the Appeal (R. 88-98; RE- 62-72).

On July 12, 2010, Anthony J. Judson filed his Reply to the Motion to Dismiss filed by the County (R. 99-100; RE- 73-74).

On August 6, 2010, Special Circuit Judge Albert B. Smith, III entered his Order (R. 101-103; RE- 1-3).

C. Disposition in the Court Below

On August 6, 2010, Special Circuit Judge Albert B. Smith, III entered his Order pursuant to M.R.C.P. (b)(6) and (c) and addressed the issues of standing and deference of appeal courts to

decisions made by a local board of supervisors. (R. 101-103; RE- 1-3).

D. Statement of Facts Relative to Issues Presented for Review

- The original dispute of Mr. Hudson was that the board of supervisors made an unlawful decision to build the new office building for the Jones County Department of Human Services (DHS) outside the city of Laurel on property in Ellisville owned by the county. (R. 3& 65; RE- 4& 59)
- MS Code Annotated § 43-1-11 authorizes the board of supervisors to spend money to construct an office for the DHS but does not state that it must be located in any particular location.
- The board discussed many options and considered multiple proposals concerning the location of a new building for the Jones County Department of Human Services before making the final decision to build the building on property in Ellisville owned by the county. (R. 20-77; RE- 14 - 61).
- The board of supervisors' decision was appealed by Mr. Hudson to the circuit court pursuant to MS Code Annotated § 11-51-75.
- A Bill of Exceptions that include the board's minutes was filed by the Board with the Circuit Clerk pursuant to MS Code Annotated § 11-51-75. (R. 20-68; RE- 6-61).
- Examination of Mr. Hudson's filings reflects that Mr. Hudson is opposed to the location where the new building is being constructed; that he does not represent any particular group opposed to the location; and, that he alleges no injury different from the general public.

III. SUMMARY OF THE ARGUMENT

Mr. Hudson argues that Special Circuit Judge Albert B. Smith, III was premature in making a ruling in Hudson's appeal of the decision by the Jones County Board of Supervisors to construct a new building for the local offices of the Department of Human Services in Ellisville instead of Laurel although both municipalities are in Jones County and both are county seats since Jones County is a two district county. However, Judge Smith was within his authority pursuant to M.R.C.P. 12(b)(6) and 12(c) neither of which require a hearing when the court has before it the pleadings necessary to make a ruling.

§ 11-51-75 of the Mississippi Code of 1972, Annotated and Amended, provides for appeals from boards of supervisors to the circuit court but does not require an on the record hearing as argued by Mr. Hudson.

Minutes of the boards of supervisors are not transcripts of everything said during a meeting and do not contain all of the debate by the board. Such minutes are not illegal minutes, as argued by Mr. Hudson, if such statements of members of the public and the supervisors are not transcribed into the minutes.

IV. ARGUMENT

A. Standard of Review

Mississippi Rule of Civil Procedure 12(b)(6) provides that:

... The following defenses may at the option of the pleader be made by motion:
Failure to state a claim upon which relief can be granted.

A Rule 12(b)(6) motion should not be granted unless it appears "to a certainty that the plaintiff is entitled to no relief under any set of facts that could be proved in support the claim." *Heartsouth, PLLC v. Boyd*, 865 So.2d 1095, 1101 (Miss. 2004) This court has held that a Rule 12(b)(6) motion to dismiss "should not be granted unless it appears beyond a reasonable doubt that the Plaintiff can prove no set of facts in support of his claim which entitles him to relief."

Id. (citing *Butler v. Bd. of Supervisors for Hinds County*, 659 So.2d 578, 581 (Miss.1995)). When reviewing the trial court's grant of a motion to dismiss pursuant to Rule 12(b)(6), this Court employs de novò review. *Id.* (citing *Tucker v. Hinds County*, 558 So.2d 869, 872 (Miss.1990)).

Mississippi Rule of Civil Procedure 12(c) provides that:

Motion for judgment on the pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. . . .

Unlike a Rule 56 motion for summary judgment, a Rule 12(c) motion for judgment on the pleadings is decided on the face of the pleadings alone. *Huff-Cook, Inc. v. Dale*, 913 So.2d 988, 990 (Miss. 2005) (citing *Hartford Cas. Ins. Co.*, 826 So.2d at 1210.) On a Rule 12(c) motion, the allegations in the complaint must be taken as true, and the motion should not be granted unless it appears beyond any reasonable doubt that the non-moving party will be unable to prove any set of facts in support of the claim which would entitle the non-moving party to relief. *Id.* (citing *Park Place Entm't*, 860 So.2d at 813). The standard of review this court employs for a Rule 12(c) motion for judgment on the pleadings is de novo. *Id.*

B. Mr. Hudson's appeal should be denied since Hudson lacked standing to appeal the board of supervisors' decision

MS Code Annotated § 11-51-75 (the appeal statute for Boards of Supervisors) does not in any way confer standing. *Burgess v. City of Gulfport*, 814 So.2d 149 (Miss. 2002).

Furthermore, persons appealing decision pursuant to this statute must have a colorable interest in the subject matter of the litigation. *Id.* at 153. To have standing one must experience adverse effects different from the general public. *Id.* Finally, the mere fact that a person resides in the county is not sufficient to confer standing. *Id.* In this case Mr. Hudson has made no assertion in any of his filings that he individually has been harmed by the decision of the board to locate the DHS building in Ellisville. He has not exhibited any colorable interest in the matter, but appears

to assert his standing only on the mere fact that he is a resident of Jones County which is insufficient to confer standing. Furthermore, Hudson has not alleged any representation for any aggrieved citizens of Jones County, and while Mississippi's standing requirements are quite liberal, one must at least demonstrate a colorable interest in the subject matter of the litigation. Special Circuit Judge Albert B. Smith, III was correct in finding that Hudson did not have standing to file this appeal.

C. Mr. Hudson's appeal should be denied since he failed to state a claim upon which relief can be granted

The Mississippi Code makes no requirement for the board of supervisors to provide a building for the local county DHS offices. Instead, the statute gives discretion to the board in providing office space for the local DHS office.

The boards of supervisors of the various counties of this state are hereby authorized and empowered, **in their discretion**, to expend and appropriate such sums **as they deem necessary** out of any available county funds for the purpose of providing **office space for the local county department of public welfare**. This includes, but is not limited to, adequate office space for the efficient conduct of business, as well as providing for payment of electricity, water, gas, maintenance and repair of the building, and janitorial services and supplies. Miss. Code Ann. § 43-1-11.

There is no requirement for the county to provide a building for the local DHS offices. Even more so, there is no statutory requirement to build the office building in any particular location. Instead the statute gives the board of supervisors the legal authority to appropriate the money to pay for such offices in their discretion.

This statute gives clear discretion to the board in the funding and locating of the local DHS offices. There is no requirement that should the board of supervisors find, in their discretion, to fund office spaces for DHS, that the offices be located in any particular location. Location is governed by "county home rule". The Jones County Board of Supervisors' decision to fund the construction in Ellisville, Jones County, Mississippi for office spaces for the local

office of the Department of Human Services is clearly within the Board's statutory authority.

When there is no specific provision made by law the board of supervisors has authority under what is referred to as "County Home Rule" as set forth in MS Code Annotated § 19-3-40 the relevant portion of which is set forth below:

- (1) 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 of 1972, 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. Except as otherwise provided in subsection (2) of this section, the powers granted to boards of supervisors in this section are complete without the existence of or reference to any specific authority granted in any other statute or law of the State of Mississippi
- (2) [omitted]

Homes Rule is thus designed to give counties broad authority in matters of local concern.

The Jones County Board of Supervisors is in a better position to determine where the DHS building should be constructed and deference should be given to the board's decision.

The Jones County Board of Supervisors' decision is supported by substantial evidence and is not arbitrary and capricious. The appeal record shows the substantial work the Board put into finding a reasonable location for the office buildings. (R. 22-67; RE- 16-61). The Board began evaluating and working on this project as far back as February 22, 2000. The Board ultimately decided that the location in Ellisville works well since it is on property already owned by the county that adjoins property on which the following offices operate: Jones County Health Department, Jones County Juvenile and Adult Correctional Facilities, the Jones County School District Administrative Offices; and the Jones County Maintenance Department.

The appeal record is full of discussions, proposals, and options the Board considered before determining the final location for the local DHS offices and the decision is therefore supported by substantial evidence and should be affirmed. (R. 22-67; RE- 16-61)

D. Mr. Hudson's Statement of the Issues are addressed below:

1. The first issue stated by Mr. Hudson is as follows: "Did the trial Court err in denying Hudson Due Process by not allowing Hudson the opportunity to file brief as outlined in MS Code Annotated § 11-51-75?" (Hudson's Brief, page3)

MS Code Annotated § 11-51-75 provides for the filing of a "bill of exceptions", but does not provide for the filing of a "brief". Mr. Hudson however did have the opportunity to file a Reply Brief to the County's Motion to Dismiss which the circuit court considered before entering an Order in this case. (R. 99-100, RE- 73-74).

2. The second issue stated by Mr. Hudson is as follows: "Did the trial Court err in denying Hudson Due Process by refusing to compel the County to release accurate minutes pursuant to MS Code Annotated § 19-3-27?" (Hudson's Brief, page 3)

Mr. Hudson argues throughout his brief that verbal statements and discussions by various people in attendance at the board meeting should be included in the board's minutes. Board minutes, however, are not a transcript of everything that is said at the board's meeting. Instead the board's minutes record actions, proceedings, and resolutions of the board.

MS Code Annotated § 19-3-27 states:

It shall be the duty of the clerk of the board of supervisors to keep and preserve a complete and correct record of all the proceedings and orders of the board. . . .

The statute does not require a transcript or writing down of every statement, comment, or point of discussion during a meeting.

3. The third issue stated by Mr. Hudson is as follows: "Did the trial Court err in denying him Due Process by setting a hearing, (August 18, 2010), and then ruling before allowing Hudson to submit evidence of standing after judges law clerk agreed that it could be presented at that hearing?" (Hudson's Brief, page 3)

No hearing where all parties are present is required for the circuit court to enter an order on grounds of *Miss. R. Civ. Pro. 12(b)(6)*, failure to state a claim upon which relief can be

granted. The circuit court may make a ruling on the bill of exceptions and other filings before it. Also *Miss. R. Civ. Pro. 12(c)* provides for a judgment on the pleadings. This rule likewise has no requirement of an actual on the record hearing to allow a court to enter an order. After the county filed its Motion to Dismiss and Mr. Hudson filed his response there was a telephone conference discussing a possible hearing. However, the court obviously believed that it had the necessary pleadings before it to make a ruling without a hearing and entered its order accordingly. Requiring a hearing when one is not necessary only incurs unnecessary costs and expenses.

4. Under paragraph III of Mr. Hudson's Brief entitled "Summary of the Argument" Mr. Hudson states, "The trial Court erred when it granted summary judgment before ordering the county to produce legal minutes. The trial court further erred when it granted summary judgment on Hudson's legal standing. Finally, the trial court erred when it granted summary judgment before allowing Hudson to file brief as prescribed by law." (Hudson's Brief, page 8)

The circuit court did not enter summary judgment because it did not consider any matters outside of the pleadings. Therefore *Miss. R. Civ. Pro. 12(b)(6) and (c)* did not convert to a motion for summary judgment. However, had it converted to a motion for summary judgment a hearing is not always required for a court to enter an order on the motion for summary judgment. The other arguments set forth by Mr. Hudson in paragraph III of Hudson's Brief concerning standing, minutes, and the filing of a brief were addressed earlier by the county.

V. CONCLUSION

The County has presented in this matter that Mr. Hudson had no standing to bring the appeal to the circuit court, that no relief could be granted as a matter of law, and that a judgment on the pleadings was appropriate pursuant to Rule 12(b)(6) and (c) of the Mississippi Rule of civil Procedure. The bill of exceptions and the other filings in this case are consistent with the circuit court's ruling. Accordingly, the Circuit Court's Order should be affirmed.

Respectfully submitted,

JONES COUNTY BOARD OF SUPERVISORS

BY: *M. Wayne Thompson*
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CERTIFICATE OF SERVICE

I, M. Wayne Thompson, do hereby certify that I have forwarded, via Federal Express Overnight Delivery, the original and three copies of **Brief for Appellee** to the following:

Ms. Kathy Gillis, Clerk
Supreme Court of Mississippi
Court of Appeals
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Jackson, MS 39201-1082

I also hereby certify that I have this day served a true and correct copy of the above and foregoing Brief to:

Honorable Albert B. Smith, III
Special Judge
P. O. Box 478
Cleveland, MS 38732

*Via United States Mail
First Class, Postage Prepaid*

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*Via United States Mail
First Class, Postage Prepaid*

THIS the 13th day of January, 2011.


M. WAYNE THOMPSON