

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

Anthony J. Hudson Appellant

vs Circuit No. 2010-0028-CV03  
SCT No. 2010-CP-01307

Jones County Board of Supervisors Appellees

APPEAL FROM JONES COUNTY CIRCUIT COURT  
SECOND JUDICIAL DISTRICT  
HONORABLE ALBERT SMITH III

BRIEF OF APPELLANT

ORAL ARGUMENT NOT REQUESTED

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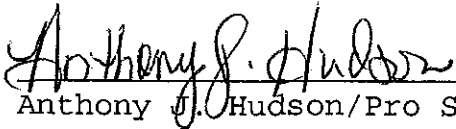
vs Circuit No. 2010-0028-CV03  
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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned Appellant certify 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 judge of the court of appeals may evaluate possible disqualifications or recusal.

- |                                      |                   |
|--------------------------------------|-------------------|
| 1. Anthony J. Hudson                 | Appellant/Pro Se  |
| 2. Jones County Board of Supervisors | Appellees         |
| 3. M. Wayne Thompson                 | Appellees Counsel |
| 4. Honorable Albert Smith III        | Special Judge     |

  
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A. Standard of Review	
B. Mr. Hudson's appeal should be granted since a genuine issue of material facts exists and his claim should prevail as a matter of law.	
C. Mr. Hudson's statement of issues is addressed below.	
1. The First Issue stated by Mr. Hudson is "Did the trial Court err in denying Hudson Due Process by not allowing Hudson the opportunity to file brief as outlined in <b>Miss Code Ann. 11-51-75?</b>	
2. Issue two, according to Mr. Hudson is, "Did the trial court err in denying him Due Process by refusing to compel the County to release accurate minutes pursuant to <b>Miss Code Ann. 19-3-27?</b>	
3. The third issue that will be argued by Mr. Hudson is, "Did the trial court err in denying him Due Process by setting hearing, <b>(August 18, 2010)</b> , and then ruling before allowing Hudson to submit evidence of standing after judges law clerk agreed that it could be presented at that hearing?	

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Jones County Board of Supervisors Appellees

**BRIEF FOR APPELLANT**

Comes now Appellant and file this his Brief in the  
above styled appeal.

I. **STATEMENT OF THE ISSUE**

The issue is:

Whether or not the circuit court was correct in granting  
summary judgment in this matter.

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, granting summary  
judgment in favor of Defendants in this matter. The case  
filed in the lower court concerns the arbitrary and  
capricious decision of the County Board of Supervisors to  
relocate the Department of Human Services out of its  
central location thereby causing irreparable harm and  
injury to citizens of Laurel. (R101-103).

## B. COURSE OF PROCEEDINGS

On March 17, 2010, Anthony J. Hudson filed an appeal of the decision of the County Board of Supervisors to relocate DHS. **See Anthony J. Hudson v. Jones County Board of Supervisors. Case No. 2010-0028-CV3. (R.3-4).**

On March 22, 2010, Mr. Hudson filed a motion to obtain the courts assistance in compelling the County Board of Supervisors to release record within thirty days. **(R.7).**

On March 23, 2010, Judge Billy J. Landrum filed an order of recusal. **(R.8).**

On April 6, 2010, The Mississippi Supreme Court appointed the Honorable Albert B. Smith III from the Eleventh Circuit Court District.

On April 16, 2010, The County Board of Supervisors by and through their Attorney filed their resolution regarding Hudson's Bill of Exceptions. **(R.20-75).**

On April 19, 2010, Mr. Hudson filed another motion to obtain the Courts assistance compelling the county Board Clerk to submit accurate minutes from March 15, 2010 and a copy of the Community Development Block Grant filed by the Board. **(R.76-80).**

On May 4, 2010, the Honorable Albert Smith III granted Mr. Hudson permission to proceed in forma pauperis in the above style action. **(R.80).**

On June 7, 2010, Mr. Hudson filed a proposed order pursuant to **Rule 5.05 (R. 81-82).**

On June 10, 2010, the Jones County Board of Supervisors by and through their attorney filed a response to the Plaintiff's motion to obtain the Courts assistance in compelling the County Board Clerk to submit accurate minutes from March 2010 and the Community Development black Grant filed by the County. **(R.83-85).**

On June 14, 2010, Mr. Hudson filed his reply to the Boards response to his motion to obtain the Courts assistance in compelling the County Clerk to submit accurate minutes from March 15, 2010, a copy of the City of Laurel's Resolution and the Community Development Block

Grant filed by the County. (R.86-87).

On July 6, 2010, the County filed a motion to dismiss Hudson's appeal or in the alternative, motion to affirm the decision of the Jones County Supervisors. (R.88-98).

On July 12, 2010, Mr. Hudson filed his reply to the Appellees motion to dismiss appeal. (R. 99-100).

**C. DISPOSITION IN THE COURT BELOW**

On August 6, 2010, Judge Albert B. Smith III granted the Defendants motion to dismiss on all two grounds. (R.103).

**D. STANDARD OF REVIEW**

This Court reviews the lower court's grant or denial of the motion for summary judgment *de novo*, "making its own determination on the motion." **Lowery v. Guar. Bank and Trust co., 597 So. 2d 79, 81 (Miss. 1991)** "the evidentiary matters are reviewed in the light most favorable to the nonmoving party." *Id.*

**E. STATEMENT OF FACTS RELATIVE TO ISSUES PRESENTED FOR REVIEW.**

- The appeal of the decision of the County Board of Supervisors to remove DHS from it's central location Laurel Jones County to Highway 11, Ellisville, Ms.
- **11-51-75** Mississippi Code of 1972 as Annotated and Amended is the applicable statute governing this appeal.
- **Rule 5.05**

Provides a plaintiff with the means to request the Court's assistance compelling records.

- **19-3-7** Mississippi Code of 1972 as Annotated and Amended is an applicable statute governing this appeal.
- The Circuit Court considered pleadings without enforcing **Mississippi Code 19-3-27.**

- The Circuit Court considered the pleadings without allowing Hudson the opportunity to submit a brief as prescribed by law.
- While in a telephonic conference on or about August 2, 2010, the appointed judge's law clerk scheduled a hearing on **August 18, 2010**, in Jones County. Also during this conference the law clerk questioned Mr. Hudson about his legal standing. Mr. Hudson asked permission to present proof of legal standing in the hearing. Hudson, was granted permission by the law clerk.

### III. SUMMARY OF THE ARGUMENT

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.

#### ARGUMENT

The Appellate Court can look beyond the administrative agency's finding. **Johnson v. Ferguson 435 So. 2d. 1191, 1194-95 (Mississippi 1983)**. The rule is sufficiently flexible to allow the appellate to examine the record as a whole and where such record reveals that the order of the [agency] is based on a mere scintilla of evidence and is against the overwhelming weight of the credible evidence, the court will reverse.

On March 17, 2010, Hudson filed an appeal pursuant to **11-51-75 of the Mississippi Code Ann.** Hudson then pursuant to Rule 5.05 filed a motion to obtain the Courts assistance in obtaining the record. **Rule 5.05** places the burden on the Appellant to make sure the record is filed within thirty days after notice of appeal. **(R.7)**.

On April 16, 2010, the County filed its resolution regarding Hudson's Bill of Exceptions. The Bill of Exceptions is amended to include the board minutes dated



February 22, 2000 until March 15, 2010, all marked as cumulative Exhibit A and was consisting of 45 pages of board minutes.

The minutes of the Board of Supervisors are the sole and exclusive evidence of what the Board did. **See Board of Supervisors Adams County v. Giles 219 Miss 245, 259, 68 So. 2d. 483 (1953) quoting Smith v. Board of Supervisors of Tallahatchie County 124 Miss 36, 41, 86 So. 2d. 707, 709 (1920).**

These minutes were specifically typed up for the Appellant because not one of these minutes reflects why Johnny Burnett and Jerome Wyatt wanted DHS placed in the City of Laurel. For instance, Mr. Wyatt, who is Mr. Hudson's Elected Official, stated in a meeting that he considered the decision to locate DHS on Highway 11 to be **irresponsible**. He further stated that "It's sad when the people who have the least of defenses and information about this end up getting the short end of the stick every time. **He further stated that a number of low-income and elderly residents living in the Laurel area have expressed concerns about having transportation to the site if it were located on highway 11 and that DHS Officials have expressed a desire to keep DHS in Laurel.** These statements were made by Mr. Wyatt during an open meeting and on the record but were not in the minutes. **See Hudson's Bill of Exceptions, because# 2010-0028-CV03 Exhibit C attached. (R.9).**

The next statements removed from the minutes were the statements of Mrs. Sparkman, District Manager for DHS. Mrs. Sparkman, who was bounded to **Miss Code Ann. 43-1-4 (A&B)** told the County one more time that it was their desired to keep DHS in downtown Laurel. Hudson was at this meeting and knew that this statement was made on the record. This statement was removed from the first discussion. **Exc. 1**

In that same March 15, 2010, meeting, the City of Laurel's Resolution was read by Supervisor Jerome Wyatt. Reading from the Resolution, Wyatt stated that the Laurel City Council acting for and on behalf of the City of Laurel finds it within the best **interest of the Citizens** of Laurel to formally request the Jones County Board of Supervisors to reconsider the location for the construction of the New Department of Human Services building to the Central Business District of Laurel to best serve the **Majority of**

**the clients** using the services of the Department of Human Services. This was not reflected in the minutes and the Resolution was not released with the minutes. **Exc. 2**

On April 19, 2010, Appellant reinstated his Motion to obtain the Court's assistance in compelling the County Board Clerk to submit accurate minutes from March 15, 2010, a true copy of the City's Resolution, and a copy of the CDBG grant. This motion was left unanswered by the appointed judge.

On June 10, 2010, Appellees responded to Appellant's motion to obtain the Courts assistance in compelling the County Board Clerk to Submit Accurate Minutes from March 15, 2010, and CDBG Grant Filed by Board.

On June 14, 2010, Hudson replied to the Board response to his Motion to obtain the courts assistance. Hudson pled that the board minutes were not signed by the president or the vice president and that statements were removed from these board minutes that was relevant to this case.

On July 6, 2010, the County filed a Motion to dismiss appeal or in the alternative motion to affirm the decision of the Board of Supervisors. On July 12, 2010, Hudson replied to the Appellees Motion to dismiss appeal or in the alternative, Motion to affirm the decision of the County.

On July 12, 2010, Hudson filed a reply. In this reply Hudson stated that he was in compliance with **Mississippi Code Ann. 11-51-75**, that the Court should order the County to comply with **MCA 19-3-27**, and finally told the Court that he was a resident of Jones County and had an interest in this case.

On or about the 2nd day of August, the law clerk of the appointed judge called Mr. Hudson's home. This clerk told Mr. Hudson to hold on while he gets Mr. Smith on the phone. Once Mr. Smith was on the phone, the clerk told both parties that the judge wanted to schedule a hearing on August 18, 2010 at 9:00 am. Both parties told the clerk that this would be fine.

The Clerk then told Mr. Hudson there were some concerns with legal standing. Mr. Hudson told this clerk that he had proof of his legal standing and asked if it would be ok to submit this proof in the August 18, 2010 hearing. Hudson

further told the Clerk that if they were going to entertain the Defendant's Motion for Summary Judgment he would be subpoenaing witnesses. The clerk agreed and told both parties that he and the judge would probably come into Laurel on August 17, 2010, and spend the night in a hotel to make the 9:00 hearing.

On August 6, 2010, the lower court granted summary judgment to the County stating that Hudson's appeal was timely filed, that Hudson did not have standing, that the mere allegations that the county would cause irreparable harm and injury was not enough to declare that decision arbitrary and capricious, and that Hudson never stated that he was representing the citizens of Laurel.

The court erred in granting summary judgment on Hudson's legal standing to maintain this appeal. Hudson was granted permission to submit his proof of legal standing in the August 18, 2010 hearing. If the Court or its clerk knew a judgment was going to be made, they could have told the Appellant to submit what he felt would be sufficient proof. This was never done violating Hudson's 14th Amendment Right to Due Process and Equal Protection under the laws. {**Exc. 3. SNAP NOTICE OF EXPIRATION**}.

The Courts actions deprived Hudson of his right to avail himself of the legal process. Without the premature dismissal Hudson would have prevailed on a timely appeal and proof of legal standing. The only issue that would have been facing this court today is, "If the decision to remove DHS from its central location was arbitrary, capricious and without substantial evidence."

### **ILLEGAL MINUTES**

The Bill of Exceptions constitutes the record on appeal. **Wilkinson County Bd. of Supervisors v. Quality Farms, Inc., 767 So. 2d 1007, 1011 (Miss 2000) (quoting, Hooks v. George County 748 So. 2d. 678, 680 (Miss 1999);** The Circuit Court may review evidence included in the Bill of Exceptions. **eg. Id.**

These minutes were crucial to this case. Accurate Legal minutes would have proven the desire of the officials at DHS, and the statements made by the Appellant's own Elected Official who stated that, **"a number of low-income and**

Board Clerk in these illegal minutes stated that Ms. Wheeler didn't want DHS in the downtown area but actually, the Laurel Express and downtown merchants expressed strong opposition to DHS being located at the **proposed site by the Supervisors because of parking issues**. Mack said the city would work with the board to find a new location. Any statements in support of DHS remaining in Laurel were deleted from these minutes. **Exc.5 & 7.**

The City and the County then approved for some property behind Fred's. After the environmental study on this property, it was determined that the soil was contaminated. After these results, a citizen who knew of the lack of public transportation and the hardship this would cause on the elderly, single mothers, the disabled and low income, he found it in his heart to donated land he obtained from the hard work of his family. The Board rejected his graceful offer without checking if there was some surrounding land that the City could add to make the land an adequate size. **Exc.8.**

Further, if allowed to brief as prescribed by law, Hudson could have pointed the court to the statement of Mr. Dial. He stated, "We have tried every way in the world to keep DHS in Laurel said Dial. We've wasted a lot of time. It's just time to move on." **Exc.4.**

If it was the Supervisor's intention to try every way in the world to keep DHS in Laurel, they would have checked out the several realtors and individuals who contacted Mr. Miller with property. The illegal minutes show no one contacting these realtors or individuals.

Mr. Dial and Mr. Saul intentions were to first change the central part (metropolitan area) of the County, and then make it look as if they struggled with the City of Laurel for over 10 years to accomplish their real goal. That goal was to get all of Jones County Services on HWY 11. **Exc.4, 9, & 6.**

If the minutes of the Board was not illegally doctored, which is probably the reason they did not comply with **Mississippi Code Ann. 19-3-27, OR** if the Appellant would have been able to brief and or attend the hearing scheduled for August 18th, he could have proven through documentation and testimony that the Boards decision was based on a lack of disregard for the fundamental nature of things and a

disregard for the surrounding facts and settled controlling principles. **See. McGowan v. Miss State Oil and Gas Bd. 604 So. 2d, 312, 322 (Miss 1972), quoting Miss State Dept of Health v. Southwest Miss Reg Med. Ctr. 580, So. 2d. 1238 (Miss 1991).**

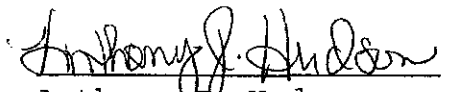
The lower court further erred because Miss Code. Ann. 43-1-11 does give the County discretion to spend funds for the purpose of providing office space for the local county department of public welfare but it does not have the power to force DHS to violate **Miss Code Ann. 43-1-4 (a) (b)**. DHS desires were purposely deleted from the minutes to hinder this appeal. Officials at DHS knew that moving on HWY 11 would hinder their clients but there concerns were ignored and concealed from the minutes.

#### CONCLUSION

In conclusion, the lower court's premature dismissal, it's refusal to order the County to comply with **Miss. Code 19-3-27**, it's refusal to allow briefing pursuant to the statute, and it's refusal to allow Appellant the hearing itself scheduled prejudiced Hudson chances to prevail.

WHEREFORE, Appellant respectfully urges this Court to reverse and remand.

Respectfully submitted,



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#### CERTIFICATE OF SERVICE

I, Anthony J. Hudson on this date December 23, 2010 certify that a copy of this forgoing brief and excerpts have been hand delivered to M. Wayne Thompson and a copy filed in the Jones County Circuit Court for the Honorable Albert B. Smith III.

