IN THE SUPREME COURT OF MISSISSIPPI

NO. 2018-CA-00937-SCT

PEARL RIVER COUNTY BOARD OF SUPERVISORS AND POPLARVILLE SPECIAL MUNICIPAL SEPARATE SCHOOL DISTRICT

v.

MISSISSIPPI STATE BOARD OF EDUCATION, LAMAR COUNTY SCHOOL DISTRICT, LUMBERTON PUBLIC SCHOOL DISTRICT AND COMMISSION ON THE ADMINISTRATIVE CONSOLIDATION OF THE LUMBERTON PUBLIC SCHOOL DISTRICT

DATE OF JUDGMENT:	05/30/2018
TRIAL JUDGE:	HON. DEBORAH J. GAMBRELL
TRIAL COURT ATTORNEYS:	R. ANDREW TAGGART, JR. DAVID G. PORTER HAROLD E. PIZZETTA, III RICK NORTON PATRICK H. ZACHARY
COURT FROM WHICH APPEALED:	PEARL RIVER COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANTS:	R. ANDREW TAGGART, JR. DAVID G. PORTER
ATTORNEYS FOR APPELLEES:	WILLIAM A. WHITEHEAD, JR RICK NORTON PATRICK H. ZACHARY HAROLD E. PIZZETTA, III
NATURE OF THE CASE:	CIVIL - OTHER
DISPOSITION:	AFFIRMED - 02/06/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

COLEMAN, JUSTICE, FOR THE COURT:

¶1. The case *sub judice* is an appeal seeking to undo the dissolution of the Lumberton Public School District that occurred on July 1, 2018. The Lumberton Public School District, before its dissolution, encompassed territory in both Lamar and Pearl River Counties. During the 2016 regular session, the Legislature passed Senate Bill 2500 to dissolve the Lumberton School District and to consolidate its remnants with the Lamar County School District on the Lamar County side of the county line and the Poplarville School District on the Pearl River County side of the county line. The Legislature, through Mississippi Code Section 37-7-104.5(2)(a) (Rev. 2019) created the eleven member Commission on the Administrative Consolidation of the Lumberton Public School District. The statute tasked the Commission with preparing a plan to abolish the Lumberton Public School District and to include the students of the former district in the Lamar County and Poplarville school districts.

¶2. The Commission included, *inter alia*, the state superintendent of education's designee, Michael Kent, and the superintendents of the three affected school districts. The Commission devised and implemented a plan in an attempt to achieve the statute's directive. Given the composition of the Commission, the Poplarville School District had only three of eleven votes. Poplarville claimed below and claims here that the plan chosen by the Commission exceeded its statutory authority. Poplarville and Pearl River County claim that the Commission ignored the specific legislative mandate of Section 37-7-104.5 and chose an illegal plan based on Mississippi Code Section 37-7-103 (Rev. 2019). However, we hold that Poplarville failed to timely challenge the consolidation plan.

FACTS AND PROCEDURAL HISTORY

¶3. Poplarville School District and Pearl River County seek to undo the July 1, 2018 consolidation of the Lumberton Public School District and the Lamar County School District. In 2016, the Mississippi Legislature adopted Senate Bill 2500, which, after being signed into law, was codified as Mississippi Code Section 37-7-104.5. The purpose of Section 37-7-104.5 was to administratively dissolve, consolidate, and split the Lumberton Public School District at the Lamar and Pearl River County line. The statute created the Commission on the Administrative Consolidation of the Lumberton Public Schools to work in conjunction with the Mississippi State Board of Education to accomplish the consolidation goal. However, Poplarville School District contends that instead of following the directive of Section 37-7-104.5, the Commission dissolved the Lumberton School District and consolidated all of it, to include the students who reside in Pearl River County, into the Lamar County School District.

¶4. In March of 2017, the Commission approved the consolidation plan that had been created by the Lumberton and Lamar County School Districts. The Commission called several meetings to discuss the required agreement to consolidate Lumberton schools. The Commission was comprised of eleven members representing the State and affected school districts. The Pearl River County School District had three representatives, the Lamar County School District had four representatives, the Lumberton School District had three representatives, and the State Superintendent's designee, Michael Kent, acted as Commission

chairman. No member of the Commission voted to oppose the plan submitted by the Lumberton and Lamar School Districts.

¶5. In April of 2017, the Lumberton and Lamar School districts formally voted to consolidate the two school districts, including the territory of the former Lumberton School District found in Pearl River County. Pursuant to Mississippi Code Section 37-7-115 (Rev. 2019), any challenge to the consolidation decision was required to be filed within ten days of the boards' meetings. After the vote, Lamar and Lumberton School Districts proceeded with the voluntary consolidation. Both districts published notice of the resolutions in the *Lamar Times*, declaring that the consolidation would go into effect on July 1, 2018. However, no appeal was timely filed, and on June 16, 2017, the State Board of Education approved the consolidation plan.

¶6. Five months after the State Board of Education approved the consolidation plan, the Pearl River County Board of Supervisors filed suit, challenging the consolidation of Lumberton Public School District and Lamar County School District. The Chancery Court of Pearl River County denied the Pearl River County Board of Supervisors' motion for summary judgment, granted the Mississippi Department of Education's motion for summary judgment, and entered a final judgment in favor of the Mississippi Department of Education.

¶7. The Pearl River County Board of Supervisors challenges the grant of summary judgment and the trial judge's denial of its motion to recuse.

STANDARD OF REVIEW

I. Standard of review for motions for summary judgment

¶8. "[R]eview of the trial court's granting or denial of a motion for summary judgment requires the application of *de novo* review." ***Adams v. Graceland Care Ctr. of Oxford, LLC***, 208 So. 3d 575, 579 (¶ 9) (Miss. 2017) (citing ***Copiah Cty. v. Oliver***, 51 So. 3d 205, 207 (¶ 7) (Miss. 2011)). For a motion for summary judgment, the Court examines all the evidentiary matters before it, including admissions in pleadings, answers to interrogatories, depositions, and affidavits. ***Stewart ex rel. Womack v. City of Jackson***, 804 So. 2d 1041, 1046 (¶ 8) (Miss. 2002). Evidence is reviewed in the light most favorable to the nonmoving party. ***Id.*** "If the moving party is then entitled to judgment as a matter of law, summary judgment should be entered in the moving party's favor." ***Clarksdale Mun. Sch. Dist. v. State***, 233 So. 3d 299, 303 (¶ 11) (Miss. 2017) (citing ***Stewart***, 804 So. 2d at 1046 (¶ 8)).

II. Standard of review for motion for recusal

¶9. In determining whether a judge should have recused, the standard of appellate review is manifest abuse of discretion. ***Hancock v. S. Farm Bureau Cas. Ins. Co.***, 912 So. 2d 844, 849 (¶ 11) (Miss. 2005). "In determining whether a judge should have recused himself, the Court must consider the trial in its entirety and examine every ruling to determine if those rulings were prejudicial to the moving party." ***Id.*** (emphasis omitted) (citing ***Jones v. State***, 841 So. 2d 115, 135 (¶ 60) (Miss. 2003)). In applying the standard of review to a denial of a recusal motion, the Court presumes the impartiality of the trial judge. ***Bredemeier v. Jackson***, 689 So. 2d 770, 774 (Miss. 1997).

DISCUSSION

I. Mississippi Code Section 37-7-115 provided the exclusive remedy by which Pearl River County could challenge the consolidation.

¶10. In granting the dispositive motion below, the chancellor found that Pearl River County's complaint was an appeal of the decision to consolidate the Lumberton School District in its entirety into the Lamar County School District. The chancellor reasoned that because Pearl River did not file an appeal within ten days as required by Mississippi Code Section 37-7-115, the complaint had to be dismissed. On appeal, Pearl River contends that the chancellor wrongly found that Section 37-7-115 provided the only means for Pearl River County to pursue the relief it sought in its complaint. Pearl River County contends that it is not an "aggrieved person" such that Section 37-7-115 would apply to it.

¶11. Pearl River County Board of Supervisors filed a Complaint for Temporary Restraining Order, Preliminary and Permanent Injunction, and Declaratory Judgment. The complaint rested on the general equitable jurisdiction of the chancery court. It did not mention Section 37-7-115, and Pearl River did not draft the complaint as an appeal. The complaint alleged that the consolidation agreement was illegal and argued that as a result of its implementation, "significant adverse taxing and funding inequities at the expense of Pearl River County" and its taxpayers would result. The complaint also requested a declaratory judgment from the chancery court to determine the right of the affected citizens of Pearl River County to be released from the allegedly improper consolidation agreement. In the demand for relief, Pearl River County requested that the court enter a permanent injunction that would enjoin the defendants from continuing to violate Section 37-7-104.5. Finally, the complaint requested that the chancery court declare the consolidation agreement void *ab initio*.

¶12. At the motion hearing on Pearl River County Board of Supervisors' request for a preliminary injunction, counsel for Pearl River argued that a preliminary injunction was appropriate pursuant to the established equitable principles governing them. In other words, Pearl River argued for traditional equitable relief, not for an appeal. At the hearing, however, counsel for Pearl River did respond to the defendants' untimely-appeal argument by attempting to argue lack of proper notice.

¶13. In her final judgment, the chancellor wrote that the complaints must be dismissed because the plaintiffs "are attempting a judicial review of [the] consolidation orders." Section 37-7-115 provides the exclusive procedure by which school board consolidation orders may be challenged in court. Section 37-7-115 directs that "[a]ny person aggrieved by an order of the school board adopted under any of the foregoing provisions may appeal therefrom within ten days from the date of the adjournment of the meeting at which such order is entered." Miss. Code. Ann. § 37-7-115 (Rev. 2019). The challenge must proceed "in the same manner as appeals are taken from judgment or decisions of the board of supervisors as provided in Section 11-51-75, Mississippi Code of 1972, the provisions of which shall be fully applicable to appeals taken hereunder." *Id.*

¶14. It is well settled that Section 11-51-75 is an exclusive remedy. "This Court noted that Mississippi Code Section 11–51–75 provided a right of appeal to circuit court for any person aggrieved by a decision of municipal authorities or boards of supervisors—an adequate remedy at law . . . ." ***A-1 Pallet Co. v. City of Jackson***, 40 So. 3d 563, 569 (¶ 21) (Miss. 2010) (citing ***Moore v. Sanders***, 558 So. 2d 1383, 1385 (Miss. 1990)). The Court in ***A-1***

Pallet Co. held, "the circuit court had exclusive jurisdiction to hear appeals of actions or rulings of the Jackson City Council. Thus, A–1 had an adequate remedy at law, and injunctive relief could not be granted." ***Id.*** A-1 Pallet argued that since the City Council acted without authority of law, the order was not appealable to circuit court. ***Id.*** The Court rejected that argument, stating, "'We are of the opinion that any act of a county or municipality leaving a party aggrieved is appealable under § 11–51–75'. . . ." ***A-1 Pallet Co. v. City of Jackson***, 40 So. 3d 563, 569 (¶ 23) (Miss. 2010) (quoting ***Hood v. Perry Cty.***, 821 So. 2d 900, 902 (¶ 7) (Miss. Ct. App. 2002)).

¶15. The fact that Section 11-51-75 is the exclusive remedy is clear; Mississippi precedent is consistent. "[E]xclusive jurisdiction was in the circuit court pursuant to § 11–51–75. Therefore, the chancery court did not err in finding lack of jurisdiction on the complaint requesting injunctive relief." ***S. Cent. Turf, Inc. v. City of Jackson***, 526 So. 2d 558, 561 (Miss. 1988). But, Pearl River County argues that Section 37-7-115 does not apply to it, claiming that it is not a "person aggrieved" for purposes of the statute. Pearl River County further argues that even if the statute does apply to it, it has not missed the ten day deadline to file an appeal because Lamar County's publication of notice was insufficient.

A. Pearl River County is a "person aggrieved" for purposes of Mississippi Code Section 37-7-115.

¶16. Pearl River County is a "person aggrieved" based on the language found in Mississippi Code Section 1-3-39. Section 1-3-39 states,

> The term "person," when used in any statute, shall apply to artificial as well as natural persons; and when used to designate the party whose property may be the subject of offense, shall include the United States, this state, or any other

> state, territory, or country, and any county, city, town or village which may lawfully own property in this state; also all public and private corporations, as well as individuals.

Miss. Code Ann. § 1-3-39 (Rev. 2019).

¶17. The Court addressed Section 1590 of the Code of 1906, which is the predecessor to Section 1-3-29 and contains the same language, in ***Robertson v. Monroe County***, 79 So. 184, 186 (1918). The Court held,

> We think it is to be taken in connection with the first clause of the section, and so taken that it means not only artificial persons, as private corporations, but also includes public corporations. The term "public corporation" is used in this section; *public corporations would include a county as well as a municipality*.

Robertson v. Monroe Cty., 79 So. 184, 186 (1918) (emphasis added).

¶18. The Court clearly states that a county can be considered a person. Additionally, more recent precedent suggests that a board of education is a "person aggrieved" for purposes of other statutes. The Court in ***Mississippi Gaming Commission v. Board of Education*** held that the board of education in that case was a person aggrieved that could sue or be sued. ***Miss. Gaming Comm'n v. Bd. of Educ.***, 691 So. 2d 452, 461 (Miss. 1997) (quoting ***Hill v. Thompson***, 564 So. 2d 1, 6 (Miss. 1989)).

¶19. Pearl River County argues that a county may only be considered a person for purposes of the statute if property is the subject of the offense. Even if Pearl River County's argument is correct, Pearl River County stated multiple times during proceedings that government property was at issue in the case *sub judice*.

> [I]t's a mandatory direction from the state legislature, that Poplarville, Lumberton, and Lamar County School Districts are to enter into an agreement by which the Lumberton School District would be consolidated into the other

> two and the *physical property of which, depending on which side of the county line it fell, would go either to the Lamar County School District or the Poplarville School District.*

(Emphasis added.)

> Taking property that's on one side of the county line and investing it in a school district on the other side of the county line; requiring students who live on one side of the county line to go to schools in schools on the other side of the county line, It is hard to imagine more irreparable injury. *Property, of course, is uniquely to the area in which irreparable injury cases typically arise.*

(Emphasis added.)

¶20. Pearl River County continued that the property it was addressing in the action is the property of residents who would be assessed *ad valorem* taxes. Based on the language of Section 1-3-39 and the statements made by Pearl River County, Pearl River County is a "person aggrieved" for the purposes of Section 37-7-115.

B. Publication was not required for the appeal deadline to begin to run pursuant to Mississippi Code Section 37-7-115.

¶21. Pearl River County argues that publication pursuant to Mississippi Code Section 37-7-105 was necessary for the ten day deadline for appeal in Section 37-7-115 to begin to run. Section 37-7-105 requires the school districts involved in a consolidation to publish the order of consolidation for three consecutive weeks in the districts that are consolidating. Miss. Code. Ann. § 37-7-105 (Rev. 2019). The statute states further that the order will become final thirty days after the first publication, unless 20 percent of the qualified electors in the school district file a petition protesting the alteration. *Id.*

¶22. Nothing in Section 37-7-105 or Section 37-7-115 suggests that the deadline for appeal in Section 37-7-115 is affected by the publication required by 37-7-105. Section 37-7-105 allows the public to protest the school board's decision by petition. Section 37-7-115 is completely separate, allowing for judicial intervention of a consolidation order. The deadline to file an appeal pursuant to Section 37-7-115 is ten days from the date of the meeting in which the order of consolidation was entered, not final. Section 37-7-115 appeals are taken in the same manner as Section 11-51-75 appeals, which do not require publication in a newspaper. Miss. Code. Ann. § 11-51-75 (Rev. 2019).

¶23. Pearl River County is a "person aggrieved" for purposes of Section 37-7-115, publication is not necessary pursuant to Section 37-7-115, and Section 37-7-115 is an exclusive remedy. We find that the chancellor did not err by holding that the appeal was untimely filed pursuant to Section 37-7-115.

III. The chancery judge did not err by denying the motion to recuse.

¶24. Pearl River County Board of Supervisors argues that an announcement by the chancellor at the start of the hearing showed cause for the chancellor to recuse. Pearl River County Board of Supervisors argues that the chancellor had a duty to recuse because of the governmental entities involved in the case, specifically because a reasonable person, knowing all the circumstances, would harbor doubts about her impartiality. Pearl River County based its argument on the recent recusal of the same judge in ***Benjamin F. Crosby, Jr., Revocable Trust v. Pearl River County***, No. 2010-0591-GN-W. However, after review of the facts of the case and judicial canons, the trial judge declined to recuse.

¶25. The law surrounding the recusal of judges in Mississippi is well settled. Canon 3 of the Code of Judicial Conduct places a burden on courts to use an objective standard in deciding whether a judge should have disqualified themselves from hearing a case. ***Tubwell v. Grant***, 760 So. 2d 687, 689 (¶ 7) (Miss. 2000). "A judge is required to disqualify himself if a reasonable person, knowing all of the circumstances, would harbor doubts about his impartiality." ***Tubwell v. Grant***, 760 So. 2d 687, 689 (¶ 7) (Miss. 2000) (internal quotation marks omitted) (quoting ***Jenkins v. Forrest Cty. Gen. Hosp.***, 542 So. 2d 1180, 1181 (Miss. 1988)). A trial judge is presumed to be qualified and unbiased, and the presumption may only be overcome by evidence creating a reasonable doubt about the validity of the presumption. ***Bredemeier***, 689 So. 2d at 774. "When a judge is not disqualified under the constitutional or statutory provisions the decision is left up to each individual judge and is subject to review only in the case of manifest abuse of discretion." ***Tubwell***, 760 So. 2d at 689 (¶ 7) (citing ***Buchanan v. Buchanan***, 587 So. 2d 892, 895 (Miss. 1991)). Furthermore, the Court has stated that, "In the absence of a judge expressing a bias or prejudice toward a party or proof in the record of such bias or prejudice, a judge should not recuse himself." ***Bateman v. Gray***, 963 So. 2d 1284, 1291 (¶ 28) (Miss. 2007) (internal quotation marks omitted) (quoting ***Hathcock v. S. Farm Bureau Cas. Ins. Co.***, 912 So. 2d 844, 852 (¶ 23) (Miss. 2005)). The burden, which is a heavy one, is on the movant to prove facts sufficient to establish disqualifying bias or prejudice. ***Hodnett v. State***, 787 So. 2d 670 (¶ 18) (Miss. Ct. App. 2001).

¶26. Pearl River County Board of Supervisors argues that the chancellor should have recused because an order of recusal was entered in a separate civil action in which Pearl River County was a party. However, other than the statement from the ***Crosby Trust*** litigation, Pearl River County Board of Supervisors does not identify anything else in the record that would justify the conclusion that a reasonable person knowing all of the circumstances would harbor doubts as to the chancellor's impartiality. Furthermore, it fails to point to any other evidence to identify the impartiality issues in the ***Crosby Trust*** litigation, the parties to the ***Crosby Trust*** litigation, the attorneys to the ***Crosby Trust*** litigation or any other factor that would require a similar outcome here.

¶27. The legal authorities cited by Pearl River County Board of Supervisors offer no support to the contentions that the trial judge failed to properly consider and apply the cannons of judicial conduct. The chancery court addressed and properly rejected the contention that the chancellor must recuse herself from any case involving a board of supervisors from a county within her jurisdiction.

¶28. The trial judge stated on the record that

> The Court reviewed thoroughly and completely the Mississippi Code of Judicial Conduct, especially Canon 2 and Canon 3 and further announced that the Court has to serve litigants in all five counties composing the 10th Chancery District which includes many governmental entities and affirmed that to recuse in every case wherein a governmental entity is involved without having a basis for recusal, will unduly overburden the Supreme Court which ultimately would have to provide Judges to take the place and stead of those elected to do the work in its district.

¶29. The Pearl River County Board of Supervisors has not pointed to any other evidence in the record to support its claim that, viewed objectively, a reasonable person may question

the judge's ability to remain unbiased and impartial in ruling on the merits of the dispute between school districts.

¶30. The trial judge properly denied Pearl River County Board of Supervisors motion for recusal.

CONCLUSION

¶31. The Pearl River County Board of Supervisors is a "person aggrieved" for purposes of Section 37-7-115, publication is not necessary pursuant to Section 37-7-115, and Section 37-7-115 is an exclusive remedy. The chancery court did not err by finding that the appeal was untimely filed pursuant to Section 37-7-115. The decision of the chancery court is affirmed.

¶32. **AFFIRMED.**

KITCHENS AND KING, P.JJ., MAXWELL, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR. RANDOLPH, C.J., NOT PARTICIPATING.