

SUPREME COURT OF MISSISSIPPI

A & F Properties, LLC v. Madison County Board of Supervisors,
Lake Caroline, Inc. and Lake Caroline Owners Association

933 So. 2d 296 (Miss. 2006) · No. No. 2004-CC-02302-SCT · Decided June 29, 2006

SUMMARY

The Mississippi Supreme Court affirmed the circuit court's judgment upholding the Madison County Board of Supervisors' denial of A & F Properties' request to convert a golf course into a residential subdivision. The court held that the request was premature because the parties' contract required the property to remain a golf course through December 31, 2006, and because an earlier unappealed Board ruling barred reconsideration. The court concluded that the matter was not yet ripe for adjudication and that it could not issue an advisory opinion.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Randolph, Justice; Smith, C.J.; Waller, P.J.; Cobb, P.J.; Easley, J.; Carlson, J.; Graves, J.; Randolph, J.; Dickinson, J.
JURISDICTION	Mississippi
DECIDED	June 29, 2006
DOCKET	No. 2004-CC-02302-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Madison County Circuit Court's affirmance of the Madison County Board of Supervisors' denial of A & F Properties, LLC's request to amend the Lake Caroline Master Plan to permit conversion of a golf course into a residential subdivision.
STANDARD OF REVIEW	Administrative agency decisions are reviewed under the substantial-evidence, arbitrary-or-capricious, scope-of-authority, and constitutional-or-statutory-rights standards. Questions of law, including contract construction, are reviewed de novo.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	A & F Properties, LLC v. Madison County Board of Supervisors, Lake Caroline, Inc., Lake Caroline Owners Association

TOPICS

contract interpretation

ripeness

judicial review of agency action

appellate procedure

zoning

PRACTICE AREAS

contract law

administrative law

land use and zoning

appellate procedure

QUESTIONS PRESENTED

1. Whether AFP's request to amend the Lake Caroline Master Plan and approve residential development was premature under the parties' contract.
2. Whether AFP's renewed request was barred by the Board's unappealed prior ruling under administrative res judicata or collateral estoppel.
3. Whether the circuit court properly affirmed the Board's denial of AFP's request.

HOLDINGS

1. The request was premature because the contract unambiguously required AFP to maintain the property as a golf course until December 31, 2006, unless it sold the property to another party that would maintain it as a golf course.
2. The Board's initial ruling that AFP's request was premature was binding after AFP failed to appeal it, and administrative res judicata or collateral estoppel barred AFP from submitting the same substantive request again before the contractual expiration date.
3. The court lacked power to issue an advisory opinion concerning a request that would not ripen until after December 31, 2006.

KEY QUOTATIONS

“Here, the plain, unambiguous language of the LCI-AFP Contract mandates that the property be maintained as a golf course until December 31, 2006.” (933 So. 2d at 301)

“In denying AFP's request, the Board erroneously ignored its binding initial ruling of prematurity.” (933 So. 2d at 302)

“Until that time, when this action ripens, this Court has no power to issue an advisory opinion.” (933 So. 2d at 302)

FACTUAL BACKGROUND

Lake Caroline, Inc. conveyed 154 acres in the Lake Caroline Planned Unit Development to A & F Properties, LLC, which agreed to develop and maintain an eighteen-hole golf course on the property through December 31, 2006. The contract also restricted competing golf-course operations and provided a right of first refusal if AFP sold the golf course during the first seven years. After developing the property as a golf course, AFP sought to convert it into a residential subdivision, but the Madison County Board of Supervisors denied the request after a public hearing. AFP later submitted a substantially similar request to a newly constituted Board without appealing the first denial.

PROCEDURAL HISTORY

The Board denied AFP's initial request in December 2003, tabling the matter until after November 2006. AFP did not appeal that ruling and instead submitted a substantially similar request to a newly constituted Board in March 2004. The Board denied the renewed request, and the Madison County Circuit Court affirmed. The Mississippi Supreme Court affirmed, holding that the request was premature under the contract and barred by the Board's unappealed initial ruling.

DISPOSITION

affirmed

CASES CITED

- Ladner v. Harrison County Board of Supervisors, 793 So. 2d 637, 638 (Miss. 2001)
- Barnes v. Board of Supervisors, DeSoto County, 553 So. 2d 508, 511 (Miss. 1989)
- Board of Law Enforcement Officers Standards & Training v. Butler, 672 So. 2d 1196, 1199 (Miss. 1996)
- Harrah's Vicksburg Corp. v. Pennebaker, 812 So. 2d 163, 170 (Miss. 2001)
- Ferrara v. Walters, 919 So. 2d 876, 881-82 (Miss. 2005)
- Warwick v. Gautier Utility District, 738 So. 2d 212, 215 (Miss. 1999)
- Mississippi State Highway Commission v. Patterson Enterprises, Ltd., 627 So. 2d 261, 263 (Miss. 1993)
- Biddix v. McConnell, 911 So. 2d 468, 471 (Miss. 2005)
- G.B. 'Boots' Smith Corp. v. Cobb, 860 So. 2d 774, 776-77 (Miss. 2003)
- Rotenberry v. Hooker, 864 So. 2d 266, 269 (Miss. 2003)
- Royer Homes of Mississippi, Inc. v. Chandeleur Homes, Inc., 857 So. 2d 748, 752-53 (Miss. 2003)
- Simmons v. Bank of Mississippi, 593 So. 2d 40, 42-43 (Miss. 1992)
- Pursue Energy Corp. v. Perkins, 558 So. 2d 349, 352 (Miss. 1990)
- Mississippi Farm Bureau Mutual Insurance Co. v. Walters, 908 So. 2d 765, 769 (Miss. 2005)
- State Automobile Mutual Insurance Co. v. Glover, 253 Miss. 477, 176 So. 2d 256, 258 (1965)
- Smith v. University of Mississippi, 797 So. 2d 956, 963 (Miss. 2001)
- Zimmerman v. Three Rivers Planning & Development District, 747 So. 2d 853, 861 (Miss. Ct. App. 1999)
- Hood v. Mississippi Department of Wildlife Conservation, 571 So. 2d 263, 268 (Miss. 1990)
- In re Summers, 325 U.S. 561, 567, 65 S. Ct. 1307, 89 L. Ed. 1795 (1945)
- Furstein v. Hill, 218 Conn. 610, 627, 590 A.2d 939 (1991)
- Allred v. Webb, 641 So. 2d 1218, 1220 (Miss. 1994)
- Insured Savings & Loan Association v. State, 242 Miss. 547, 554, 135 So. 2d 703, 706 (1961)

OPINION

A & F PROP. v. Madison County Bd. of Sup'rs
933 So. 2d 296

PER CURIAM.

933 So. 2d 296 (2006)

A & F PROPERTIES, LLC v. MADISON COUNTY BOARD OF SUPERVISORS, Lake Caroline, Inc. and Lake Caroline Owners Association. No. 2004-CC-02302-SCT. Supreme Court of Mississippi. June 29, 2006.

*297 G. Todd Burwell, William Larry Latham, Ridgeland, attorneys for appellant.

Robert Richard Cirilli, Jr., Edmund L. Brunini, Jr., Jackson, Thomas A. Cook, Ridgeland, Lisa Michele McCain, Steven H. Smith, Jackson, attorneys for appellees. Before WALLER, P.J., GRAVES and RANDOLPH, JJ. RANDOLPH, Justice, for the Court. ¶ 1. On July 14, 1989, following public notice and a public hearing, the Madison County Board of Supervisors ("Board") adopted the petition of Lake Caroline, Inc. ("LCI") to have 3,047 acres of property rezoned from A-1 Agricultural Classification to P-1 Planned Unit Development District Classification. On September 27, 1995, LCI and A & F Properties, LLC ("AFP") entered into a Contract wherein LCI agreed to sell 154 acres within the Lake Caroline Planned Unit Development ("PUD") to AFP for ten (\$10) dollars.[1] As additional consideration, AFP agreed to construct "an eighteen (18) hole semi-private golf course" on the subject property. Regarding the golf course, the Contract provided that the property must be used *298 and maintained as a golf course for ten (10) years from December 31, 1996. Moreover, LCI contractually agreed "not to compete with [AFP]" during that period in any golf course operation within the Lake Caroline development "so long as [AFP] operates a golf course." Finally, the Contract also provided that "[i]f [AFP] should desire to sell the Golf Course during the first seven (7) years, [LCI] . . . shall be given a right of first refusal to purchase the golf course" (Emphasis added). On November 3, 1995, LCI conveyed the property to AFP by warranty deed. In addition to reiterating portions of the Contract regarding restrictions on the use and transfer of the property as a golf course, the Warranty Deed provided that, "[t]he warranty of this conveyance is made subject to ... (2) All applicable zoning ordinances of the governmental authority having jurisdiction over the herein conveyed property." In 1996, AFP developed the 154 acres as a golf course within the PUD. ¶ 2. At some point after June 26, 1989, the 1989 Master Plan for the Lake Caroline PUD could not be found in the Madison County records.[2] In 1998, the Board adopted and duly recorded a different Master Plan ("1998 Master Plan") and declared that all future actions affecting development within the PUD must be in conformity with it. Like the 1989 Master Plan, the 1998 Master Plan provided that "the developer reserves the right, in its sole discretion, to alter or amend the uses and locations illustrated on this plan." Unlike the 1989 Master Plan, the 1998 Master Plan illustrated a golf course as an amenity within the PUD. The 1998 Master Plan was prepared, filed, and adopted without the knowledge or involvement of AFP, and again unlike 1989, there was neither public notice, nor a public hearing regarding its adoption by the Board. On February 22, 2001, the 1998 Master Plan was allegedly[3] amended, adding 217 small residential lots ("2001 Master Plan"), without public notice or a public hearing. On January 8, 2003, the Master Plan was again allegedly[4] amended, providing for the

addition of six (6) commercial lots ("2003 Master Plan"), once again without public notice or a public hearing. ¶ 3. On September 1, 2003, AFP advised the Board of its intention to convert the golf course into a residential subdivision. AFP asserted that the golf course was not profitable and was not being used by residents of the Lake Caroline PUD.[5] On September 9, 2003, Madison County Zoning Administrator Brad Sellers sent a letter to AFP stating that the golf course is zoned as a PUD and "[a]ny changes planned therein must be approved by the [Board] through an amendment to the Master Development Plan." Up to this point, AFP alleges that it was unaware of any Master Plan for the PUD other than the 1989 Master Plan. On November 7, 2003, AFP filed a request asking the Board to hear its proposal to amend the Lake Caroline Master Plan to allow AFP to change the use of its property from a golf course to a residential *299 subdivision. Unlike with the 1998 substitution and the 2001 and January 2003 alleged amendments, the Board refused to consider AFP's request without public notice and a public hearing.[6] On December 12, 2003, a public hearing was held by the Board regarding AFP's request. After lengthy argument from AFP, LCI, and LCOA, a transcript of the hearing reveals that the Board unanimously voted to table AFP's request and not reconsider the matter before November 2006; and its decision was duly recorded in the Board's minutes. This action of the Board was not appealed. ¶ 4. The composition of the Board changed in January 2004 as the result of elections the prior year. Despite the Board's December 12, 2003, ruling, and without seeking to rescind that ruling, AFP re-filed its prior request on March 26, 2004, for the newly-constituted Board to hear and consider the proposed amendment to the Lake Caroline Master Plan. The newly-constituted Board granted AFP's public hearing request. At an April 23, 2004, public hearing, the Board received and considered argument, testimony, and documentary evidence. Significantly, LCI and the Lake Caroline Owners Association ("LCOA") argued that the hearing should be barred under the doctrines of res judicata and equitable estoppel by virtue of its substantive similarity to the December 12, 2003, hearing. They claimed that the Board's prior ruling that the request was premature applied until November 2006. A board member offered a motion to table consideration of the matter until December 2006, but the motion died for lack of a second. Thereafter, another Board member offered a motion to deny AFP's request. That motion was seconded. After discussion, the Board unanimously voted to deny AFP's request to amend the Lake Caroline Master Plan, which was duly recorded in the minutes of said meeting. ¶ 5. On May 3, 2004, AFP filed its Notice of Appeal and Bill of Exceptions, appealing the Board's denial of its request to amend the Lake Caroline Master Plan. On October 25, 2004, the Opinion and Order of the Circuit Court of Madison County affirmed the Board's denial of AFP's request. The circuit court found, inter alia, the Board's denial could be justified insofar as any decision the Board rendered for AFP would be premature, as the LCI-AFP Contract required the golf course to remain functional until December 31, 2006. On November 8, 2004, the Final Judgment of the Circuit Court of Madison County, affirming the denial of AFP's request to amend, was entered. On November 16, 2004, AFP filed its Notice of Appeal against the Board, LCI, and LCOA ("Appellees"), appealing the Final Judgment of the Circuit Court of

Madison County. Specifically, AFP seeks approval of its request to amend the Master Plan and a remand of its request for approval of its development or site plan to the Board for consideration and action in accordance with the Madison County Zoning Ordinance.

STANDARD OF REVIEW

¶ 6. "The standard of review of an order of a Board of Supervisors is the same standard which applies in appeals *300 from the decisions of administrative agencies." *Ladner v. Harrison County Bd. of Supervisors*, 793 So. 2d 637, 638 (Miss. 2001) (citing *Barnes v. Bd. of Supervisors, DeSoto County*, 553 So. 2d 508, 511 (Miss. 1989)). The decision of the Board will not be disturbed unless its order "was unsupported by substantial evidence; was arbitrary or capricious; was beyond the [Board's] scope or powers; or violated the constitutional or statutory rights of the aggrieved party." *Id.* (citing *Bd. of Law Enforcement Officers Standards & Training v. Butler*, 672 So. 2d 1196, 1199 (Miss. 1996)) (emphasis added). As to questions of law, however, the Board's decision will be reviewed *de novo*. See *Harrah's Vicksburg Corp. v. Pennebaker*, 812 So. 2d 163, 170 (Miss.2001).

ANALYSIS

¶ 7. AFP raised, and the Board and LCI responded to, the following issues:

- (1) Was the Board's denial of AFP's Request to Amend Caroline Master Plan and Approve Residential Development supported by substantial evidence?
- (2) Was the Board's denial of the Request arbitrary and capricious?
- (3) Was the Board's denial of the Request a violation of AFP's due process rights?
- (4) Was the Board's denial of the Request a violation of AFP's equal protection rights?
- (5) Did the Board's denial of the Request exceed the Board's legislative authority as set forth by the Madison County Zoning Ordinance?
- (6) Was the Board's denial of the Request contrary to the Ordinance and therefore unlawful?
- (7) Did the Circuit Court of Madison County, Mississippi err or abuse its discretion in affirming the denial of the Request filed by AFP?

¶ 8. LCOA presents the issues as follows:

- (1) AFP had no legal right/"standing" to amend the Lake Caroline Planned Unit Development.
- (2) AFP's Request to Amend the Lake Caroline PUD was "premature" and contractually prohibited.
- (3) The Lake Caroline PUD was officially and properly approved by the Board on February 25, 1998, and cannot now be collaterally attacked.
- (4) AFP failed and refused to comply with Sections 402.9-1-402.9-6, Madison County Zoning Ordinances.
- (5) AFP was "equitably estopped" from seeking/granting the relief requested by AFP.

¶ 9. This Court finds that Appellant Issue (7) and Appellee LCOA Issue (2) are dispositive. Simply stated, was AFP's Request to Amend Caroline Master Plan and Approve Residential Development premature, and if answered in the affirmative, would the Board's denial of the Request, as affirmed by the Circuit Court of Madison County, likewise be premature? ¶ 10. The Circuit Court of

Madison County, in its Opinion and Order, properly found that "interpretation of the golf course agreement is at the core of this matter." Moreover, the circuit court determined that "given the pending and/or impending litigation between the parties. . . AFP's request was, in fact, premature before such litigation had been finally concluded." The circuit court also found: [w]hile the Board is called on to make many decisions on many issues, it is not the body to adjudicate the rights and responsibilities of AFP and the Developer under the golf course agreement or any assertions of rights in relation thereto by the Homeowners, or any *301 claims it previously violated AFP's constitutional rights. In short, "that litigation, not a Board meeting, which is summary in nature, is the vehicle to determine the duties of all the parties as to such future." Only following that litigation or upon expiration of the contract could an amendment to the Master Plan avoid being premature. As such, the circuit court concluded that "[t]he Board's denial can be upheld on the basis that any decision by it that far from December 31, 2006, and/or prior to the other parties sorting out their various rights and responsibilities under the golf course agreement, would be premature." Appellees assert that AFP's request was not only premature, but contractually prohibited by virtue of the plain language of the LCI-AFP Contract. In short, they contend AFP is contractually required to continue using the property as a golf course through December 31, 2006.

¶ 11. "The standard of review for questions concerning the construction of a contract are questions of law that are committed to the court rather than to the fact-finder." *Ferrara v. Walters*, 919 So. 2d 876, 881 (Miss.2005) (citing *Warwick v. Gautier Utility Dist.*, 738 So. 2d 212, 215 (Miss.1999); *Miss. State Highway Comm'n v. Patterson Enters., Ltd.*, 627 So. 2d 261, 263 (Miss.1993)). Questions of law are reviewed by this Court de novo. See *Biddix v. McConnell*, 911 So. 2d 468, 471 (Miss.2005) (citing *G.B. "Boots" Smith Corp. v. Cobb*, 860 So. 2d 774, 776-77 (Miss. 2003)). Only if the contract is deemed ambiguous will the "subsequent interpretation" involve "a finding of fact." *Id.* (citing *Rotenberry v. Hooker*, 864 So. 2d 266, 269 (Miss.2003)).

¶ 12. "Our law requires this Court to accept the plain meaning of a contract as the intent of the parties where no ambiguity exists." *Ferrara*, 919 So.2d at 882 (citations omitted). In other words, "[l]egal purpose or intent should first be sought in an objective reading of the words employed in the contract to the exclusion of parol or extrinsic evidence." *Royer Homes of Miss., Inc. v. Chandeaur Homes, Inc.*, 857 So. 2d 748, 752 (Miss. 2003) (citations omitted). In applying the "four corners" test, "[o]ur concern is not nearly so much with what the parties may have intended, but with what they said, since the words employed are by far the best resource for ascertaining the intent and assigning meaning with fairness and accuracy." *Id.* (citing *Simmons v. Bank of Miss.*, 593 So. 2d 40, 42-43 (Miss.1992)). "Only if the contract is unclear or ambiguous can a court go beyond the text to determine the parties true intent." *Id.* at 752-53 (citing *Pursue Energy Corp. v. Perkins*, 558 So. 2d 349, 352 (Miss.1990)). In short, this Court "will not rewrite or deem a contract ambiguous where the language is clear and indicative of its contents." *Miss. Farm Bureau Mut. Ins. Co. v. Walters*, 908 So. 2d 765, 769 (Miss.2005) (citing *State Auto. Mut. Ins. Co. v. Glover*, 253 Miss. 477, 176 So. 2d 256, 258 (1965)).

¶ 13. Here, the plain, unambiguous language of the LCI-AFP Contract

mandates that the property be maintained as a golf course until December 31, 2006. Prior to December 31, 2006, AFP is contractually bound to either maintain the property as a golf course or sell it to another who will maintain it as such. To require AFP to submit to the provisions of the contract which it freely entered into with LCI respects the plain language of the contract. See *Walters*, 908 So.2d at 769. ¶ 14. The circuit court properly identified the prematurity issue. However, the circuit court failed to address the significance of the Board's December 2003 *302 ruling, which was not appealed. Rather than appealing, AFP simply ignored the prior ruling, and filed another request with the newly constituted Board three months later. At the subsequent hearing, LCOA properly argued to the Board that res judicata should control. "Under Mississippi law, res judicata or collateral estoppel precludes relitigation of administrative decisions." *Smith v. Univ. of Miss.*, 797 So. 2d 956, 963 (Miss.2001) (involving a terminated state employee who failed to appeal the dismissal decision of the Personnel Action Review Board to the circuit court by writ of certiorari as mandated by Miss.Code Ann. Sections 11-51-93 and 95). See also *Zimmerman v. Three Rivers Planning & Dev. Dist.*, 747 So. 2d 853, 861 (Miss.Ct.App.1999) (involving the failure to file an appeal of the Permit Board's decision within twenty days after it was entered into the books as mandated by Miss. Code Ann. Section 49-17-29). According to *Zimmerman*, "[o]nce an agency decision is made and the decision remains unappealed beyond the time to appeal, it is barred by administrative res judicata or collateral estoppel." 747 So.2d at 861 (citing *Hood v. Miss. Dep't of Wildlife Conservation*, 571 So. 2d 263, 268 (Miss.1990)). In denying AFP's request, the Board erroneously ignored its binding initial ruling of prematurity. In failing to acknowledge that initial ruling of the Board, which effectively renders this action non-justiciable until after December 31, 2006, the circuit court's prematurity analysis was incomplete. ¶ 15. Only after December 31, 2006, when AFP's contractual obligation to maintain the golf course expires, is AFP free to petition the Board regarding other uses for the subject property. Until that time, when this action ripens, this Court has no power to issue an advisory opinion. See *In re Summers*, 325 U.S. 561, 567, 65 S. Ct. 1307, 89 L. Ed. 1795 (1945) (in federal appellate courts, the case or controversy requirement mandates "an actual controversy over an issue, not a desire for an abstract declaration of the law."); *Furstein v. Hill*, 218 Conn. 610, 627, 590 A.2d 939 (1991) (at the state level, as well, "the existence of an actual controversy is an essential prerequisite to appellate jurisdiction."); *Allred v. Webb*, 641 So. 2d 1218, 1220 (Miss.1994) (the Mississippi Supreme Court "[has] no power to issue advisory opinions."); *Insured Savs. & Loan Ass'n v. State*, 242 Miss. 547, 554, 135 So. 2d 703, 706 (1961) ("The Supreme Court has no power to render advisory opinions."). Therefore, the circuit court's affirmance of the Board's denial of AFP's request was proper, but only because AFP's request was premature contractually and barred by virtue of the Board's initial ruling.

CONCLUSION

¶ 16. For these reasons, this Court finds that the circuit court was correct in rejecting AFP's request for relief, but not for the stated reasons. This Court concludes that AFP's request is premature until

the relevant provision of the LCI-AFP Contract expires on December 31, 2006. Therefore, the circuit court's judgment is affirmed. ¶ 17. AFFIRMED. SMITH, C.J., WALLER AND COBB, P.JJ., EASLEY, CARLSON AND GRAVES, JJ., CONCUR. DICKINSON, J., CONCURS IN PART WITHOUT SEPARATE WRITTEN OPINION. DIAZ, J., NOT PARTICIPATING.

NOTES

[1] In addition to the 154 acres conveyed to AFP, LCI agreed to convey an additional ten (10) residential subdivision lots to AFP, to be developed by LCI.

[2] According to Madison County Zoning Administrator Brad Sellers, "there was no Master Site Plan on file in my office and one could not be found in the Madison County Chancery Clerk's office for the Lake Caroline Planned Unit Development...."

[3] No evidence can be found in the record of Board minutes authorizing this amendment or new Master Plan.

[4] See footnote 3.

[5] Specifically, AFP claimed that only 22 of 300 homeowners within the Lake Caroline development were members of the golf course.

[6] According to Brad Sellers, "[t]he language in the zoning ordinance says it is ambiguous.... The procedure that we have followed in amendments to Master Plans have not been [to my] notice public hearings. They've simply prepared the amendment that they've proposed and presented it to the Board of Supervisors at a regular scheduled hearing." The public notice and public hearing in this situation was "at the request of the Board," effectively creating a legal requirement which was previously non-existent.