

SUPREME COURT OF MISSISSIPPI

Fletcher v. Diamondhead Incorporators

77 So. 3d 92 (Miss. 2011) · Decided October 27, 2011

SUMMARY

The Mississippi Supreme Court affirmed the chancery court’s decree incorporating the City of Diamondhead. The court held that the incorporation petition satisfied the statutory two-thirds signature requirement and that notice was proper despite continuances of the hearing. It also held that the objectors were not denied cross-examination and that the successor chancellor acted within his discretion by ruling without ordering a new hearing.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Chandler, Justice; Waller, C.J.; Carlson, P.J.; Dickinson, P.J.; Randolph, J.; Lamar, J.; Kitchens, J.; Pierce, J.; King, J.
JURISDICTION	Mississippi
DECIDED	October 27, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a chancery-court order incorporating the City of Diamondhead, Mississippi.
STANDARD OF REVIEW	The Supreme Court reviewed the chancellor’s findings concerning the legal sufficiency of the incorporation petition for manifest error, reviewed the statutory notice issue de novo, and reviewed the decision not to order a new hearing under Mississippi Rule of Civil Procedure 63(b) for abuse of discretion.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; precedential.
PARTIES	John Fletcher, John McConnon, Tom Leader v. Diamondhead Incorporators

TOPICS

- municipal law
- due process
- civil procedure
- motion for new trial

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the incorporation petition contained the signatures of at least two-thirds of the qualified electors residing in the proposed incorporation area, as required by Mississippi Code section 21-1-13.
2. Whether the incorporation proceedings were jurisdictionally defective because the petitioners did not provide new publication and posting notice after the originally noticed hearing was continued.
3. Whether the chancellor denied the objectors due process by failing to expressly direct the pro se objectors to cross-examine the Incorporators' witnesses.
4. Whether the successor chancellor abused his discretion by ruling on the nonjury incorporation proceeding without ordering a new hearing after the original hearing chancellor died.

HOLDINGS

1. The petition satisfied Mississippi Code section 21-1-13 because the chancellor did not manifestly err in finding, based on substantial evidence accounting for deaths, moves, and other voter-roll inaccuracies, that at least two-thirds of the qualified electors residing in the proposed incorporation area had signed the petition.
2. No renewed publication or posting was required when the properly noticed incorporation hearing was continued.
3. The objectors were not denied due process because they had an opportunity to cross-examine the Incorporators' witnesses but did not exercise it.
4. The successor chancellor acted within his discretion by deciding the nonjury incorporation proceeding without ordering a new hearing after the original hearing chancellor died.

KEY QUOTATIONS

“Once proper notice of the hearing date set by the chancellor has been provided in compliance with Section 21-1-15, if the hearing is continued, then all parties have notice.” (77 So. 3d at 98)

“pro se parties should be held to the same rules of procedure and substantive law as represented parties.” (77 So. 3d at 99)

FACTUAL BACKGROUND

The Diamondhead Incorporators filed a petition to incorporate the City of Diamondhead on July 22, 2008. They presented evidence concerning the petition-signature process, voter-roll inaccuracies, and the number of qualified electors residing in the proposed incorporation area. The hearing occurred on January 9, 2009; the original hearing chancellor later died before ruling, and a successor special chancellor entered a final decree of incorporation after finding that the incorporation was reasonable and required by public convenience and necessity.

PROCEDURAL HISTORY

The Diamondhead Incorporators filed a petition for incorporation in the Hancock County Chancery Court. After the original chancellor recused himself and a subsequent special chancellor died after conducting the hearing, another special chancellor entered findings and a final decree incorporating Diamondhead. The objectors appealed, challenging jurisdiction, notice, cross-examination procedures, and the successor chancellor's refusal to order a new hearing.

DISPOSITION

affirmed

CASES CITED

- Incorporation of the City of Oak Grove v. City of Hattiesburg, 684 So. 2d 1274, 1276 (Miss. 1996)
- City of Pascagoula v. Scheffler, 487 So. 2d 196, 199-202 (Miss. 1986)
- In re City of Pearl, 279 So. 2d 590, 592 (Miss. 1973)
- City of Jackson v. Byram Incorporators, 16 So. 3d 662, 670 (Miss. 2009)
- Myrick v. Incorporation of Stringer, 336 So. 2d 209, 210-211 (Miss. 1976)
- In re City of Ridgeland, 494 So. 2d 348, 352 (Miss. 1986)
- Norwood v. Extension of Boundaries of Itta Bena, 788 So. 2d 747, 751 (Miss. 2001)
- In re Town of Mantachie, 685 So. 2d 724, 726 (Miss. 1996)
- Sperry-Rand Corp. v. City of Jackson, 245 So. 2d 574, 575 (Miss. 1971)
- In re City of Hattiesburg, 840 So. 2d 69, 74 (Miss. 2003)
- Bucket v. Chaney, 47 So. 3d 148, 153 (Miss. 2010)
- Dethlefs v. Beau Maison Dev. Corp., 511 So. 2d 112, 118 (Miss. 1987)
- In re City of Clinton, 955 So. 2d 307, 331 (Miss. 2007)
- Pinecrest, LLC v. Harris, 40 So. 3d 557, 562 (Miss. 2010)