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BY _____ D.C.

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

SIERRA CLUB and GULF RESTORATION NETWORK — APPELLANTS

VS. — NO. G-2012-1657 S/2

MISSISSIPPI DEVELOPMENT AUTHORITY — APPELLEE

OPINION AND ORDER OF THE COURT

BEFORE THIS COURT is an appeal from the decision of the Mississippi Development Authority, issuing certain rules governing seismic testing and leasing for minerals in specified areas of the Mississippi Sound. On October 30, 2013, this Court entered its Order addressing certain Motions filed by Appellee. Having addressed the same, this Court held hearing on January 6, 2014. After careful consideration of all argument, as well as all relevant case and statutory law, this Court hereby finds and orders as follows:

This appeal arises from a public hearing held on August 8 and 9, 2012, before the Mississippi Major Economic Impact Agency (hereinafter "MMEIA") pursuant to an Agreed Order of this Court in *Sierra Club, et al. v. Mississippi Development Authority* Case No. G-2012-00440 in the First Judicial District of Hinds County Chancery Court. Certain parties challenged the MMEIA's proposed rules and regulations promulgated under Section 29-7-1 et seq., of the Mississippi Code of 1972, as amended. These rules and regulations addressed

the permitting of oil and gas seismic exploration and the process for leasing certain state-owned lands under the Gulf of Mexico. After the public hearing, the hearing officer recommended that the MMEIA's adoption of the rules and regulations be affirmed. The Executive Director of the MMEIA accepted the recommendation and affirmed the adoption of the rules and regulations. On September 21, 2012, the Executive Director issued the regulations. Feeling aggrieved, Appellants herein filed the current Appeal of Rulemaking with this Court on October 2, 2012.

At trial of this matter, Appellee asserted that Appellants' notice of administrative appeal was deficient. On March 15, 2012, Appellants sent a letter to Appellee stating that an appeal had been filed in Chancery Court. The letter further stated that if Appellee believed a Petition and hearing before the Commission were necessary then the same should be considered as a request for hearing. Appellee asserts that this letter does not comply with Section 29-7-21, Mississippi Code Annotated of 1972, as amended, and fails to state the grounds or reasons for appeal. Our Mississippi appellate courts have previously recognized that the only mandatory dismissal is for failure to timely file notice of appeal. "All other failings are reviewed as potential discretionary dismissals." *Wheeler v. Mississippi DEQ Permit Bd., et al.*, 856 So.2d 700, 704 (Miss. Ct. App. 2003). Even our Mississippi Supreme Court has declined to dismiss an appeal "for informality of form or title of notice of appeal." *Ivy v. General Motors Acceptance Corp.*, 612 So.2d 1108, 1116 (Miss.

1992). It is important to note that Appellee voluntarily engaged in a two-day hearing with Appellant based upon the purported notice of appeal. It is further important to note that no prejudice or harm was suffered by Appellee due to the lack of specificity in the purported notice of appeal. Appellee was aware of the grounds of the appeal and actively participated in the administrative appeal process with Appellants. Appellee is correct that Appellant's letter which served as notice of appeal was informal and substantially lacking in appropriate form. However, **under these specific circumstances**, this Court will not dismiss the appeal "for informality of form." Accordingly, this Court will address Appellants' arguments to invalidate the promulgated regulations.

The standard and scope of judicial review of an administrative decision is limited. *See Loftin v. George County Bd. of Educ.*, 183 So. 2d 621, 622 (Miss. 1996). In particular, appeals to the Chancery Court of decisions made by administrative agencies are to be reviewed only to determine whether the decision (1) was supported by substantial evidence, (2) was arbitrary or capricious, (3) was beyond the power of the Board to make, or (4) violated some statutory or constitutional right of the complaining party. *Boyles v. Mississippi State Oil & Gas Bd.*, 794 So.2d 149 (Miss. 2001); *McFadden v. Mississippi State Bd. of Medical Licensure*, 735 So.2d 145, 151 (Miss. 1999).

It is a sound principal of Mississippi law that decisions of administrative agencies are to be given great deference. *See Melody Manor Convalescent Center v. Mississippi State Dept.*

of Health, 546 So. 2d 972, 974 (Miss. 1989). This highly deferential standard of review is by no means "a rubber stamp" as it requires that the decision must not be arbitrary and capricious and must be supported by substantial evidence. *Mississippi State Board of Nursing v. Wilson*, 624 So. 2d 485, 489 (Miss. 1993).

The court "must look at the full record before it in deciding whether the agency's findings were supported by substantial evidence," and in its review, "it is not relegated to wearing blinders." *Public Employees' Retirement System v. Marquez*, 774 So. 2d 421, 427 (Miss. 2000). However, ultimately, the aggrieved party bears the burden of proving that the administrative board's decision is not supported by substantial evidence. *Melody Manor Convalescent Center v. Mississippi State Dept. of Health*, 546 So. 2d 972, 974 (Miss. 1989).

All parties agree that, as part of its promulgation of the subject regulations, the MDA was required to prepare an "Economic Impact Statement" (hereinafter "EIS") under Miss. Code Ann. § 25-43-3.105. On December 15, 2011, MDA prepared a "Benefit/Cost Analysis of Offshore Leasing of State-Owned Minerals Associated with Oil and Gas in Mississippi." This half-page, single spaced, document suggests a potential lease bonus income to the State of $18.5 million, and administrative bid process costs of no more than $20,000. The document states "[s]tate leasing of oil and natural gas rights is a purely administrative process and has, in and of itself, little cost to the state and no risk of environmental damage or economic harm." The final paragraph of the document states:

> The ultimate goal of leasing is to, at some point in the future, sink exploratory wells and extract oil or natural gas, which does possess an inherent risk of environmental damage and economic loss. The costs and benefits associated with exploration and extraction of oil and natural gas is beyond the scope of this study and will be addressed in a future study.

Appellants challenge the EIS as legally insufficient under the relevant statute as well as incorrect in its classification of leasing as a purely administrative process. This Court must agree. Section 25-43-3.105 requires, in part, that the EIS include:

> (c) An estimate of the cost to the agency, and to any other state or local government entities, of **implementing and enforcing the proposed action**...;
> (d) An estimate of the cost or economic benefit to all persons directly affected by the proposed action;
> (e) An analysis of the impact of the proposed rule on small business;
> (f) A comparison of the costs and benefits of the proposed rule to the probable costs and benefits of not adopting the proposed rule or significantly amending an existing rule;
> (g) A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule where reasonable alternative methods exist which are not precluded by law;
> (h) A description of reasonable alternative methods, where applicable, for achieving the purpose of the proposed action which were considered by the agency and a statement of reasons for rejecting those alternatives in favor of the proposed rule; and
> (i) A detailed statement of the data and methodology used in making estimates required by the subsection.

A cursory reading of the EIS prepared by MDA shows that it is severely lacking in the requirements established by §25-43-3.105. The brief conclusory statement that "State leasing of oil and natural gas rights is a purely administrative process" lacks any foundation or explanation. Instead, the EIS simply postpones addressing the costs and benefits associated with exploration and extraction until a future study. Exploration and extraction are intrinsically linked to the leasing process; the same is obviously included in the **implementing and enforcing of the proposed action**. MDA acknowledges such by its statement that the ultimate goal of leasing is to explore and extract oil and natural gas. Furthermore, the EIS contains no analysis of impact on small businesses, no comparison of costs and benefits of not adopting the proposed rule, no determination of less costly or less intrusive methods, no description of reasonable alternative methods and no detailed statement of the data and methodology used in making estimates. Accordingly, this Court must find that the decision of MDA is beyond its authority and is in direct violation of the statutory requirements of §25-43-3.105. Due to the deficient EIS, this Court must also find that the promulgated regulations are arbitrary and capricious and are not supported by substantial evidence.

Based upon the foregoing, this Court finds that it is improper to proceed to the merits of the remaining claims of Appellants. Instead, the proper course of action is to remand this matter to the MDA for the consideration and preparation of a **meaningful** "Economic

Impact Statement" addressing all deficiencies as set forth above. The promulgated regulations permitting oil and gas leasing are hereby reversed and vacated.

SO ORDERED, ADJUDGED, AND DECREED THIS the 19th day of June, 2014.

WILLIAM H. SINGLETARY, Chancellor