

IN THE COURT OF APPEALS 07/02/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00474 COA

JOHN FORETICH, JR.

APPELLANT

v.

CITY OF GULFPORT

APPELLEE

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. KOSTA N. VLAHOS

COURT FROM WHICH APPEALED: HARRISON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

F. HOLT MONTGOMERY, JR.; JAMES K. WETZEL

ATTORNEYS FOR APPELLEE:

HARRY P. HEWES; DARA SKINNER

NATURE OF THE CASE: CIVIL: LEASE

TRIAL COURT DISPOSITION: PROCEDURALLY DISMISSED

BEFORE BRIDGES, P.J., BARBER, AND COLEMAN, JJ.

PER CURIAM:

John Foretich leased and operated the premises known as the "Harbor Shop" from the City of Gulfport for approximately fifteen years under a lease agreement which expired on September 15, 1994. On July 19, 1994, the Gulfport City Council authorized its city clerk to advertise for proposals for a new lease on the property. As required by statute, the city properly published on three occasions the notice to bidders. The request was issued on July 23, 1994, and proposals were received until 10:00 A.M. on August 10, 1994. The proposals received included proposals from Foretich and Pamela Ramage. The Gulfport City Council deliberated the lease proposals, and on August 30, 1994, accepted the lease proposal of Ramage by resolution. The resolution was signed by the mayor on August 31, 1994, and all bidders were notified of such action. On that day, the lease agreement was also executed.

On October 13, 1994, Foretich filed a petition with the mayor and city council requesting that the lease with Ramage be rescinded, and on October 18, 1994, at the city council's regular meeting, the petition was denied. Foretich then appealed to the circuit court. The lower court dismissed his appeal based on the fact that Foretich had permitted more than ten days to elapse between the date of the award of the lease and his appeal. Finding that the lower court was correct in its findings, we affirm.

ARGUMENT AND DISCUSSION OF THE LAW

An appeal is not a matter of right. It is subject to the applicable statutory provisions. *Bradley v. Holmes*, 134 So. 2d 494, 495 (Miss. 1961). In the case sub judice, the applicable statute states:

Any person aggrieved by a judgment or decision of the board of supervisors, or municipal authorities of a city, town, or village, may appeal within ten (10) days from the date of adjournment at which session the board of supervisors or municipal authorities rendered such judgment or decision, and may embody the facts, judgment and decision in a bill of exceptions which shall be signed by the person acting as president of the board of supervisors or of the municipal authorities.

Miss. Code Ann. § 11-51-75 (1972). The Gulfport City Council accepted the lease proposal of Pamela Ramage on August 30, 1994, and adopted a resolution approving the lease on the same day. This action became final when the mayor and city clerk signed the lease agreement and the resolution on August 31, 1994. As stated in the statute, Foretich could have appealed this decision within ten (10) days from the date of adjournment at which session the agreement was adopted. He failed to do so, procedurally barring this case from a review on the merits. Accordingly, we adopt the findings of the lower court.

THE JUDGMENT OF THE HARRISON COUNTY CIRCUIT COURT IS AFFIRMED. ALL COSTS ARE TAXED TO THE APPELLANT.

FRAISER, C.J., BRIDGES, P.J., BARBER, COLEMAN, DIAZ, KING, McMILLIN, AND SOUTHWICK, JJ., CONCUR. THOMAS, P.J., AND PAYNE, J., NOT PARTICIPATING.

