

IN THE COURT OF APPEALS 12/29/95

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00166 COA

RPM PIZZA, INC., D/B/A DOMINO'S

APPELLANT

v.

ERIC HILL

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. JOHN MONTGOMERY

COURT FROM WHICH APPEALED: CIRCUIT COURT OF OKITIBBEHA COUNTY

ATTORNEY(S) FOR APPELLANT:

WILLIAM E. WHITFIELD, III

RICHARD W. SLIMAN

ATTORNEY(S) FOR APPELLEES:

JAMES M. WARD

NATURE OF THE CASE: CONTRACT: ENFORCEMENT OF COVENANT NOT TO
COMPETE

TRIAL COURT DISPOSITION: NON-COMPETITION AGREEMENT DECLARED VOID;
COMPLAINT AND COUNTERCLAIM DISMISSED WITH PREJUDICE

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

PER CURIAM:

On January 7, 1994, RPM Pizza, Inc., d/b/a Domino's (RPM), filed its complaint in the Circuit Court of Oktibbeha County seeking entry of preliminary and permanent injunction including damages from Eric Hill. RPM sought to enforce a non-competition agreement after Hill resigned

his employment with RPM on September 14, 1993, and went to work for Papa John's pizza franchise. The parties filed a "Stipulation of Fact" which included the chancellor's ruling in the companion case of *RPM Pizza, Inc. d/b/a Domino's v. Burrell Galo Grosinske and C. Management Properties, Inc. III*, regarding a different employee. Based upon the chancellor's ruling in that case, the trial judge granted Hill's Motion to Dismiss/Motion for Summary Judgment. On appeal, RPM raises the following issues: (1) whether the non-competition agreement, under the facts and circumstances of this case, is a valid and enforceable contract; (2) the propriety of the lower court's denial of preliminary and permanent injunctive relief; (3) the propriety of the lower court's grant of Hill's Motion to Dismiss/Motion for Summary Judgment. Finding no error, we affirm the judgment of the trial court.

STATEMENT OF THE FACTS

Hill was employed by RPM as manager-in-training of the Starkville Domino's for a period of nine months under a written, non-competition agreement. This agreement restricted Hill from directly or indirectly engaging in the pizza business in competition with RPM for a period of two years within five miles of the nearest Domino's location in which he worked within the last twelve months.

Hill was originally employed by RPM in August of 1992 as a delivery driver. After approximately two months, Hill was promoted to the position as a manager in training. Hill signed

a non-competition agreement on April 30, 1993. Hill left RPM's employment on September 14, 1993, and began working for Papa John's, another pizza business which is within a five-mile radius of RPM's Starkville Domino's store where Hill had previously worked.

DISCUSSION

The Mississippi Supreme Court has recognized that covenants not to compete are restraints on trade and are not favored by the law. *Herring Gas Co. v. Whiddon*, 616 So. 2d 892, 897 (Miss. 1993); *see also Empiregas, Inc. v. Bain*, 599 So. 2d 971, 975 (Miss. 1992).

In *Grosinske*, the chancellor concluded that RPM failed to economically justify its covenant not to compete so as to overcome the public policy against such agreements. RPM failed to meet its burden in establishing the reasonableness of the two-mile, two-year restriction. "Only when such agreements are reasonable, will they be considered valid and upheld by this Court." *Empiregas*, 599 So. 2d at 975 (citing *Frierson v. Shepard Bldg. Supply Co.*, 154 So. 2d 151, 156 (Miss. 1963)). The covenant

was not specially drawn to protect any specific interest of RPM. The trial court must consider equitable balancing of the benefits to the employer against hardship to the employee. *Empiregas*, 599 So. 2d at 976. The chancellor found that the non-competition agreement was unenforceable because it was oppressive and contained unreasonable time and geographic restrictions.

We affirmed the chancellor's judgment in *Grosinske* and a copy of our opinion is attached. In the present case, the trial court correctly recognized a similar situation with Hill and properly

granted Hill's motion to dismiss. Accordingly, we affirm.

THE JUDGMENT OF THE CIRCUIT COURT OF OKTIBBEHA COUNTY DISMISSING THE COMPLAINT IS AFFIRMED. APPELLANT IS TAXED WITH ALL COSTS OF THIS APPEAL.

FRAISER, C.J., BRIDGES AND THOMAS, P.J.J., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.