

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2020-CA-00983-SCT

***MICHAEL D. WATSON, JR., IN HIS OFFICIAL
CAPACITY AS THE MISSISSIPPI SECRETARY
OF STATE AND BECKY BOYD, IN HER
OFFICIAL CAPACITY AS RANKIN COUNTY
CIRCUIT CLERK***

v.

***HARRIETT OPPENHEIM, DAVE MILLER, JOY
PARIKH, MARY HARWELL, MARTIN CLAPTON,
AND MICHELLE COLON***

DATE OF JUDGMENT:	09/02/2020
TRIAL JUDGE:	HON. DENISE OWENS
TRIAL COURT ATTORNEYS:	ROBERT B. McDUFF REILLY MORSE LANDON PAUL THAMES JOSHUA FIYENN TOM JUSTIN L. MATHENY DOUGLAS T. MIRACLE TONY R. GAYLOR THERESA J. LEE JONATHAN S. TOPAZ KRISSEY CASEY NOBILE KRISTI HASKINS JOHNSON TONY R. GAYLOR JACOB ARTHUR BRADLEY WILLIAM 'TREY' JONES, III
COURT FROM WHICH APPEALED:	HINDS COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANTS:	JUSTIN L. MATHENY WILLIAM 'TREY' JONES, III LYNN FITCH KRISTI HASKINS JOHNSON DOUGLAS T. MIRACLE KRISSEY CASEY NOBILE JACOB ARTHUR BRADLEY

ATTORNEYS FOR APPELLEES: ROBERT B. McDUFF
THERESA J. LEE
REILLY MORSE
LANDON PAUL THAMES
JOSHUA FIYENN TOM
JONATHAN S. TOPAZ
DALE E. HO
NATURE OF THE CASE: CIVIL - OTHER
DISPOSITION: ON DIRECT APPEAL: REVERSED. ON
CROSS-APPEAL: AFFIRMED - 09/18/2020
MOTION FOR REHEARING FILED:
MANDATE ISSUED:

EN BANC.

BEAM, JUSTICE, FOR THE COURT:

¶1. Six Plaintiffs brought suit in the Hinds County Chancery Court on August 26, 2020, through an amended complaint,¹ seeking a declaratory judgment regarding the meaning of the absentee-ballot provision under Mississippi law and its most recent addition in the context of the COVID-19 pandemic. Their claims deal exclusively with Mississippi Code Section 23-15-713(d), which allows the following to vote by absentee ballot:

Any person who has a temporary or permanent physical disability and who, because of such disability, is unable to vote in person without substantial hardship to himself, herself or others, or whose attendance at the voting place could reasonably cause danger to himself, herself or others.

Miss. Code Ann. § 23-15-713(d) (Rev. 2018). The Legislature added the following through House Bill 1521, which went into effect on July 8, 2020:

For purposes of this paragraph (d), “temporary physical disability” shall include any qualified elector who is under a physician-imposed quarantine due to COVID-19 during the year 2020 or is caring for a dependent who is under a physician-imposed quarantine due to COVID-19 beginning with the effective

¹ Initially, seven Plaintiffs had filed a complaint on August 11, 2020.

date of this act and the same being repealed on December 31, 2020.

H.B. 1521, Reg. Sess., 2020 Miss. Laws ch. ___, § 6.

¶2. The Plaintiffs requested that the chancery court grant the following relief:

1. Declare that [Section] 25-15-713(d) permits any voter with pre-existing conditions that cause COVID-19 to present a greater risk of severe illness or death to vote by absentee ballot during the COVID-19 pandemic.
2. Declare that [Section] 25-15-713(d) permits any voter to vote absentee if he or she wishes to avoid voting in-person at a polling place due to guidance from the [Mississippi Department of Health (MDH)], the [Centers for Disease Control and Prevention (CDC)], or other physicians or public health authorities to avoid unnecessary public gatherings during the COVID-19 pandemic or if he or she is caring or supporting a voter.
3. Issue a preliminary and permanent injunction that orders Defendant Secretary of State to instruct county elections officials about the application of [Section] 24-15-713(d) as declared by the [chancery court] and orders Defendants to take steps to educate the public about their right to vote by absentee ballot under [Section] 24-15-713(d) as declared by [the chancery court] during the COVID-19 pandemic.

¶3. The chancery court issued its order on September 2, 2020. The chancery court granted the Plaintiffs' first request, ruling as follows:

[T]he relief requested . . . , as it pertains to the issue of . . . whether [Section] 23-15-713(d) permits any voter with pre-existing conditions that cause COVID-19 to present a greater risk of severe illness or death to vote by absentee ballot during the COVID-19 pandemic – is well taken and the relief sought is hereby GRANTED to the extent that such pre-existing “physical . . . condition impairs, interferes with, or limits a person’s ability to engage in certain tasks or actions or participate in typical daily activities and interactions” or an “impaired function or ability” that interferes thereof.²

² We note that quoted language appears to have come from Merriam-Webster’s definition of “disability.” See *Disability*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/disability> (last visited Sept. 9, 2020).

¶4. The chancery court denied the Plaintiffs’ second request, finding that Section 24-15-713(d) does not permit any voter to vote absentee if he or she wishes to avoid voting in-person at a polling place due to guidance from the MDH, the CDC, or public-health authorities to avoid unnecessary public gatherings during the COVID-19 pandemic. The chancery court declared, however, that “a voter will be allowed to vote absentee if he or she or any dependent has consulted with a physician who recommends, because of that individual’s physical disability or that of their dependent, not attending any public gathering because of the possibility of contracting COVID-19[.]”

¶5. The chancery court denied the Plaintiffs’ third request for injunctive relief. The chancery court also denied the Plaintiffs’ requests for attorneys’ fees and costs, which the Plaintiffs do not cross-appeal.

¶6. On September 3, 2020, Secretary of State Michael D. Watson, Jr., appealed the chancery court’s September 2 order and filed an emergency motion for expedited consideration due to upcoming election deadlines. On September 4, 2020, the Plaintiffs filed a notice of cross-appeal.³ This Court entered an order granting the motion for expedited consideration and entered a briefing schedule.⁴

¶7. The Secretary of State argues that the plain terms of Section 24-15-713(d) require that in order to vote absentee, a voter must have a “physical disability,” and “because of” that

³ Rankin County Circuit Clerk Becky Boyd also filed a notice of appeal on September 4. Under Rule 28(j) of the Mississippi Rules of Appellate Procedure, Boyd joins in the Secretary of State’s appeal and briefs.

⁴ See Order, *Watson v. Oppenheim*, No. 2020-TS-00983 (Miss. Sept. 4, 2020).

disability, voting in-person “could reasonably cause danger” to the voter or others. The Secretary of State maintains that any voter who has a preexisting condition that is not itself a “physical disability” cannot satisfy the statute, whether or not the voter believes that COVID-19 might make voting in person dangerous. The Secretary of State contends that the chancery court erred to the extent its order suggested that Section 23-15-713(d) applies to voters otherwise.

¶8. The Secretary of State also claims that the Plaintiffs misread the Legislature’s recent addition to Section 23-15-713(d) and that the chancery court partially accepted their interpretation in error. The Secretary of State contends that the chancery court correctly disagreed with the Plaintiffs’ broad reading of the phrase “under a physician-imposed quarantine” to include anyone who is following general public-health guidance to avoid public gatherings. But the chancery court, according to the Secretary of State, erred when it suggested that a physician’s “recommendation” to quarantine can be a “physician-imposed quarantine.”

¶9. The Secretary of State maintains that according to the plain meaning of Section 23-15-713(d), a voter is only “under a physician-imposed quarantine” if the voter has been ordered to quarantine by an authorized physician. The Secretary of State contends that an authorized physician includes a voter’s personal physician who has authority by virtue of a physician-patient relationship. The Secretary of State further contends that the state health officer, or other physician authorized by law, may also order voters to quarantine.⁵ But a

⁵ The Secretary of State points to State Health Officer Dr. Thomas Dobbs’s recent order that persons who have contracted COVID-19 quarantine under penalty of law, a

recommendation or generalized public-health guidance, which does not actually impose a quarantine on anyone or compel anyone to do anything, does not suffice under the plain terms of the statute.

¶10. In their cross-appeal, the Plaintiffs contend that the phrase “physician-imposed quarantine” encompasses both mandatory and nonmandatory directives from the state health officer to avoid community events just as it encompasses similar communications from voters’ own personal physicians, whose directives can only be nonmandatory since they have no authority to issue mandatory orders.

DISCUSSION OF LAW

¶11. The matter before us presents only a question of law concerning the chancery court’s interpretation of Section 23-15-713(d) in the Plaintiffs’ suit for declaratory relief. As with all questions of law, we review the chancery court’s decision de novo. *Edwards v. Stevens*, 963 So. 2d 1108, 1109 (Miss. 2007) (citing *Ladner v. Necaize*, 771 So. 2d 353, 355 (Miss. 2000)).

¶12. In construing any statute, the function of our courts “is not to decide what a statute should provide, but to determine what it does provide.” *Smith v. Webster*, 233 So. 3d 242, 247 (Miss. 2017) (quoting *Lawson v. Honeywell Int’l, Inc.*, 75 So. 3d 1024, 1027 (Miss. 2011)). “Court[s] must not broaden or restrict a legislative act.” *Lawson*, 75 So. 3d at 1027 (citing *Barbour v. State ex rel. Hood*, 974 So. 2d 232, 240 (Miss. 2008)). If the statute’s language is clear and unambiguous, we apply its plain meaning and refrain from using

“physician-imposed quarantine” for purposes of Section 23-15-713(d).

principles of statutory construction. *Id.* at 1027. “Mississippi law mandates that ‘all words and phrases contained in the statutes are used according to their common and ordinary meaning’” *Id.* at 1028 (quoting Miss. Code Ann. § 1-3-65 (Rev. 2005)). When a popular word is used that contains no statutory definition, it must be accepted in its popular sense. *Lambert v. Ogden*, 423 So. 2d 1319, 1321 (Miss. 1982). Absent a statutory definition of a term, our courts may properly consider dictionary definitions “to ascertain the meaning of a word in its common or popular sense.” *Lawson*, 75 So. 3d at 1028.

¶13. We find that the chancery court’s order erred to the extent it declared that Section 25-15-713(d) “permits any voter with pre-existing conditions that cause COVID-19 to present a greater risk of severe illness or death to vote by absentee ballot during the COVID-19 pandemic.” Having a preexisting condition that puts a voter at a higher risk does not automatically create a temporary disability for absentee-voting purposes.

¶14. The Legislature addressed the COVID-19 pandemic and amended Section 23-15-713(d) on July 8, 2020, to provide that, “‘temporary physical disability’ shall include any qualified elector who is under a physician-imposed quarantine due to COVID-19 during the year 2020 or is caring for a dependent who is under a physician-imposed quarantine due to COVID-19” H.B. 1521, Reg. Sess., 2020 Miss. Laws ch. __, § 6.

¶15. We find that the plain meaning of “physician-imposed quarantine” requires a directive issued by a duly-authorized physician that orders a voter to quarantine, not mere “guidance” or a “recommendation.” The term “quarantine” for purposes of Section 23-15-713(d) means “a restraint upon the activities . . . of persons . . . designed to prevent the spread of disease”

or “a state of enforced isolation.” *Quarantine*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/quarantine> (last visited Sept. 9, 2020). The term “impose” means “to establish or apply by authority” or “to establish or bring about as if by force.” *Impose*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/impose> (last visited Sept. 9, 2020).

¶16. Had the Legislature intended to allow a voter to vote absentee based on a physician’s recommendation, it would have provided so accordingly with plain language. The Legislature did not do so. Instead, it promulgated a straightforward term that bestows certainty with regard to its intent behind the language added to Section 23-15-713(d) in July. And we are not permitted to add to or take from what the Legislature has plainly stated. *See Lawson*, 75 So. 3d at 1030 (“This Court ‘cannot . . . add to the plain meaning of the statute or presume that the legislature failed to state something other than what was plainly stated.’” (alteration in original) (quoting *His Way Homes, Inc. v. Miss. Gaming Comm’n*, 733 So. 2d 764, 769 (Miss. 1999))).

¶17. In turn, we reject the Plaintiffs’ cross-appeal that “physician-imposed quarantine” encompasses both mandatory and nonmandatory directives from the state health officer. And we do so for the same reason we find that the Legislature did not intend to allow a voter to vote absentee based simply on a physician’s recommendation. Had the Legislature intended this meaning, it would have used language other than “physician-imposed quarantine.” The Plaintiffs’ claim on appeal is without merit.

¶18. Finally, the chancery court’s remarks concerning the circuit clerk’s responsibilities

with regard to absentee ballots was not an issue properly raised and properly before the chancery court. To prevent any possible misunderstandings on this matter, which we are certain the chancery court did not intend, we must reiterate what this Court has said with regard to absentee ballots.

¶19. “This Court requires strict compliance with the statutes concerning absentee ballots.” *Lewis v. Griffith*, 664 So. 2d 177, 185 (Miss. 1995) (citing *Stringer v. Lucas*, 608 So. 2d 1351, 1361 (Miss. 1992)). “[A]s opposed to voting at the polls, in a public setting where the integrity of the election process can be ensured, absentee voting takes place in a private setting where the opportunity for fraud is greater.” *Thompson v. Jones*, 17 So. 3d 524, 527 (Miss. 2008) (quoting *Campbell v. Whittington*, 733 So. 2d 820, 827 (Miss. 1999)). Thus, “[i]t is imperative that the appropriate elected officials strictly adhere to the statutes concerning absentee ballots.” *Straughter v. Collins*, 819 So. 2d 1244, 1252 (Miss. 2002) (quoting *Stringer*, 608 So. 2d at 1361).

¶20. As the Secretary of State correctly states in his brief, voters are required to make a good-faith determination that they qualify before executing their absentee forms. Local officials are likewise obligated to act in good faith when ensuring that only authorized voters apply for and cast absentee ballots in the manner prescribed by law.

CONCLUSION

¶21. Since the issues have been fully briefed and because of the impending absentee-ballot deadlines, no motion for rehearing will be allowed, and the Clerk of this Court is directed to issue this Court’s mandate immediately.

¶22. (1) The chancery court erred to the extent that its order declares that Section 25-15-713(d) permits any voter with preexisting conditions that cause COVID-19 to present a greater risk of severe illness or death to vote by absentee ballot during the COVID-19 pandemic. (2) The chancery court erred to the extent that its order allows a “recommended” quarantine to qualify as a “physician-imposed quarantine.” Accordingly, we reverse those parts of the chancery court’s order.

¶23. We affirm the chancery court’s denial of the Plaintiffs’ request for a declaration that Section 25-15-713(d) “permits any voter to vote absentee if he or she wishes to avoid voting in-person at a polling place due to guidance from the MDH, the CDC, or other physicians or public health authorities to avoid unnecessary public gatherings during the COVID-19 pandemic.”

¶24. **ON DIRECT APPEAL: REVERSED. ON CROSS-APPEAL: AFFIRMED.**

RANDOLPH, C.J., MAXWELL, CHAMBERLIN AND ISHEE, JJ., CONCUR. KING, P.J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION JOINED BY KITCHENS, P.J. COLEMAN AND GRIFFIS, JJ., NOT PARTICIPATING.

KING, PRESIDING JUSTICE, CONCURRING IN PART AND DISSENTING IN PART:

¶25. The majority reverses the chancery court’s order “to the extent” it errs on the issue of which voters may cast an absentee ballot under the physical disability qualifier. Maj. Op. ¶¶ 7, 13. Yet, the chancery court did not err to any extent on this issue. It held that voters with a physical disability that causes COVID-19 to present a greater risk of severe illness or death may vote by absentee ballot. The Secretary of State specifically agrees that this holding is

correct. And yet the Secretary of State appeals, arguing that “to the extent” the chancery court made a broader holding than it did, this Court should reverse the chancery court. But in so arguing, the Secretary of State, and now this Court, read a broader “extent” into the chancery court’s order that simply does not exist. Because the Secretary of State agrees with the portion of the chancery court’s order that does exist, he essentially appeals nothing. As such, this Court need not and should not address this portion of the chancery court’s order or the appeal.

¶26. The Secretary of State admits that the four plaintiffs with preexisting conditions proved that those conditions constituted a “physical disability” for the purposes of Mississippi Code Section 23-15-713(d) (Rev. 2018), *amended by* H.B. 1521, Reg. Sess., 2020 Miss. Laws ch. ___, § 6. The Secretary of State then requests that this Court “confirm that a voter’s ‘underlying condition’ must itself constitute a ‘physical disability’ to qualify under Section 23-15-713(d)’s absentee excuse.” But that is exactly what the chancery court held: that to qualify for an absentee ballot, a voter’s underlying condition must constitute a physical disability. The Secretary of State’s appeal is essentially smoke and mirrors: it asks this Court to reverse the chancery court’s ruling and to render the same holding as did the chancery court. This Court injudiciously takes the bait.

¶27. The exact language of the order granting the plaintiffs’ request states:

whether Mississippi Code § 23-15-713(d) permits any voter with pre-existing conditions that cause COVID-19 to present a greater risk of severe illness or death to vote by absentee ballot during the COVID-19 pandemic – is well-taken and the relief sought is hereby GRANTED *to the extent that* such pre-existing “physical . . . condition impairs, interferes with, or limits a person’s ability to engage in certain tasks or actions or participate in typical daily

activities and interactions” or an “impaired function or ability” that interferes thereof[.]

(Emphasis added.) The Secretary of State and the plaintiffs agree that the quoted language in the holding is the dictionary definition of “disability” that should be used to define that statutory term. The chancery court very clearly qualified that any preexisting conditions that cause COVID-19 to present a greater risk of severe illness or death must qualify as a “physical disability” in order to for such preexisting condition to then qualify the voter for an absentee ballot. The chancery court did so in a single sentence to ensure the clarity of the qualification in its holding. This Court quotes only a portion of that single sentence out of context in order to find that it erred. Maj. Op. ¶ 13 (“We find that the chancery court’s order erred to the extent it declared that Section 23-15-713(d) ‘permits any voter with pre-existing conditions that cause COVID-19 to present a greater risk of severe illness or death to vote by absentee ballot during the COVID-19 pandemic.’”). Yet, the chancery court holds that to no extent; it held that only voters with preexisting conditions that constitute physical disabilities would qualify for an absentee ballot. The Secretary of State’s appeal and this Court’s response reversing the trial court’s order appear to be merely a politicized way of de-emphasizing the explicit statutory language that allows voters with a physical disability that would render in-person voting unreasonably dangerous for the voter to attend the voting place to vote via absentee ballot.

¶28. I consequently dissent to the portion of the majority that addresses this issue. The chancery court was clear in its holding that only preexisting conditions rendering COVID-19 riskier and that also constitute physical disabilities qualify a voter to vote by absentee ballot.

The Secretary of State was clear that he agrees with this position; yet, he inexplicably twisted the chancery court's clear order in an attempt to render it much broader than it actually is. This Court enabled the manipulation of the chancery court's order, and, unlike the Secretary of State, goes even further in its failure to clarify that those with a preexisting condition that constitutes a physical disability qualify for an absentee ballot. This Court should simply affirm the chancery court's order and leave its holding in place: a voter with preexisting conditions that cause COVID-19 to present a greater risk of severe illness or death qualifies to vote by absentee ballot during the COVID-19 pandemic if, and only if, such preexisting conditions constitute a physical disability.

KITCHENS, P.J., JOINS THIS OPINION.