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Supreme Court of Alabama.

EX PARTE Lance R. LEFLEUR, in his official capacity as Director of the Alabama Department of Environmental Management

In re: Ronald C. Smith, Latonya Gipson, and William T. Gipson

v.

Lance R. LeFleur, in his official capacity as Director of the Alabama Department of Environmental Management

1190191

|

November 6, 2020

Petition for Writ of Certiorari to the Court of Civil Appeals (Montgomery Circuit Court, CV-17-900021; Court of Civil Appeals, 2180375)

Opinion

WISE, Justice.

***1** We granted the petition for a writ of certiorari filed by Lance R. LeFleur, in his official capacity as director ("the director") of the Alabama Department of Environmental Management ("ADEM"), seeking review of the Court of Civil Appeals' decision in Smith v. LeFleur, [Ms. 2180375, October 11, 2019] —— So. 3d —— (Ala. Civ. App. 2019), in which the Court of Civil Appeals held that ADEM did not have the authority to amend Ala. Admin. Code (ADEM), Rule 335-13-4-.15, Rule 335-13-4-.22, or Rule 335-13-4-.23 to permit the use of alternative-cover materials at **landfills** ("the alternative-cover-materials rules"). For the reasons set forth below, we reverse the judgment of the Court of Civil Appeals.

Facts and Procedural History

The following facts from the Court of Civil Appeals' opinion are helpful to an understanding of this case:

"Ronald C. Smith, Latonya Gipson, and William T. Gipson ('the appellants') appeal from a summary judgment entered by the Montgomery Circuit Court ('the trial court') in favor of Lance R. LeFleur ('the director'), in his official capacity as the director of the Alabama Department of Environmental Management ('ADEM'). We reverse the summary judgment and remand the case to the trial court with instructions to enter a summary judgment for the appellants.

"Procedural History

"Since 2004, Ronald C. Smith has resided near the Stone's Throw **Landfill** located in Tallapoosa County. During that time, ADEM has permitted the operators of the Stone's Throw **Landfill** to use at least one material other than earth to cover solid waste deposited in the **landfill**. Since 2005, Latonya Gipson has resided near the Arrowhead **Landfill** located in Perry County. William T. Gipson, Latonya's brother, has resided with her at the same location for the last 10 years. Since 2009, ADEM has permitted the operators of the Arrowhead **Landfill** to use several materials other than earth to cover solid waste deposited in the **landfill**.

"On January 9, 2017, the appellants filed a multicount complaint seeking, among other things, a judgment declaring that ADEM had impermissibly adopted Ala. Admin. Code (ADEM), Rules 335-13-4-.15, -.22, and -.23 ('the alternative-cover-materials rules'), allowing **landfill** operators to use alternative materials to cover solid waste in violation of the Solid Wastes and Recyclable Materials Management Act ('the SWRMMA'), Ala. Code 1975, § 22-27-1 et seq., which, they argued, authorizes the use of only earth to cover solid waste. The appellants further requested that the trial court enjoin ADEM from enforcing the alternative-cover-materials rules and from permitting the continued use of alternative-cover materials at the Stone's Throw **Landfill** and the Arrowhead **Landfill**. The trial court dismissed the complaint, but, on appeal, this court reversed the judgment insofar as it dismissed the claims against the director. See Keith v. LeFleur, 256 So. 3d 1206 (Ala. Civ. App. 2018).

"Following the issuance of this court's opinion in Keith, the trial court entered a judgment dismissing the first five

counts of the complaint as moot, leaving for adjudication only the claims for a declaratory judgment and for injunctive relief. The appellants and the director both moved for a summary judgment as to those claims. The director argued that the appellants lacked standing to contest the validity of the alternative-cover-materials rules and asserted that those rules had been validly promulgated by ADEM pursuant to its statutory authority. The appellants asserted that they had standing to contest the alternative-cover-materials rules, which, they argued, had been adopted without statutory authority. On December 18, 2018, the trial court entered separate orders denying the appellants' summary-judgment motion and granting the director's summary-judgment motion. The appellants filed their notice of appeal to this court on January 23, 2019.5 This court conducted oral arguments in the case on August 14, 2019.

"Regulatory Background

***2** "In 1965, the United States Congress enacted the federal Solid Waste Disposal Act, formerly codified at 42 U.S.C. §§ 3521-3259, 'primarily to provide federal support for development of state solid waste management plans.' Kim Diana Connolly, Small Town Trash: A Model Comprehensive Solid Waste Ordinance for Rural Areas of the United States, 53 Cath. U.L. Rev. 1, 9 (2003). In response to the federal incentive, in 1969, the Alabama Legislature enacted this state's Solid Wastes Disposal Act ('the SWDA'). See Ala. Acts 1969, Act No. 771. The SWDA regulated the disposal of solid wastes within the state. The SWDA defined 'solid wastes' to include '[a]ll putrescible and non-putrescible discarded materials,' including, but not limited to, 'garbage,'6 demolition materials, and industrial waste. Act No. 771, § 1(c). The Act provided that

> " '[g]arbage and rubbish containing garbage shall be disposed of by sanitary **landfill**, approved incineration, composting, or by other means now available or which may later become available as approved by the Health Department and under the supervision and control of a governmental, private, or other agency acting within the provisions of this Act.'

"Act No. 771, § 2(b).

"The SWDA defined '**landfill**' as

> " '[a] method of compaction and earth cover of solid wastes other than those containing garbage or other putrescible wastes including but not limited to tree limbs and stumps, demolition materials, incinerator residues, and like materials not constituting a health or nuisance hazard, where cover need not be applied on a per day used basis.'

"Act No. 771, § 1(i), (now codified at Ala. Code 1975, § 22-27-2(20)) (emphasis added). The SWDA defined 'sanitary **landfill**' as

> " '[a] controlled area of land upon which solid waste is deposited and is compacted and covered with compacted earth each day as deposited, with no on-site burning of wastes, and so located, contoured, and drained that it will not constitute a source of water pollution as determined by the Alabama Water Improvement Commission.'

"Act No. 771, § 1(h) (now codified at Ala. Code 1975, § 22-27-2(32)) (emphasis added).

"In 1976, Congress completely restructured federal laws regulating solid-waste disposal through the passage of the Resource Conservation and Recovery Act ('RCRA') of 1976, Pub. L. No. 94-580, 90 Stat. 2795 (codified as 42 U.S.C. §§ 6901-6992k). Through the RCRA, Congress ordered the United States Environmental Protection Agency ('the EPA') to establish regulations 'containing criteria for determining which facilities shall be classified as sanitary **landfills** and which shall be classified as open dumps ....' 42 U.S.C. § 6944(a). In 1979, the EPA acted on that legislative directive by promulgating regulations defining the minimum standards for sanitary **landfills**, 40 C.F.R. Part 257, which included regulations requiring '[p]eriodic application of cover material' described as 'soil or other suitable material.' 40 C.F.R. §§ 257.3-6(c)(4) and 257.3-8(e)(6) (emphasis added).

***3** "Although the EPA regulations recognized that material other than soil could be used to cover solid waste at a sanitary **landfill**, the first comprehensive rules and regulations adopted pursuant to the SWDA in 1981 established that solid waste disposed into any 'sanitary **landfill**' operated within the state 'shall be covered' by '[a] minimum of six inches of compacted earth' 'at the conclusion of each day's operation.' Ala. Admin. Code,

Rule 335-13-4-.22(1)(a)1 (1981). The regulations did not, at that time, authorize the use of any alternative materials to cover solid waste.

"In 1982, the Alabama Legislature created ADEM, Ala. Acts 1982, Act No. 32-612, § 4(i), and appointed ADEM as the state agency responsible for regulating solid-waste disposal. See Act No. 32-612, § 3(n); see also Ala. Code 1975, § 22-27-9 (enacted in 2008). On July 21, 1988, ADEM revised Rule 335-13-4-.22(1) to provide:

> " '(a) All waste [deposited in a sanitary **landfill**] shall be covered as follows:
>
> > " '1. A minimum of six inches of compacted earth or other alternative cover material that includes but is not limited to foams, geosynthetic or waste products, and is approved by [ADEM] shall be added at the conclusion of each day's operation or as otherwise approved by [ADEM].'

"Rule 335-13-4-.22(1)(a)1. (1988) (emphasis added). That 1988 amendment introduced into Alabama the option for sanitary-**landfill** operators to cover solid waste by materials other than earth.

"In 1991, the EPA promulgated regulations regarding the disposal of household waste in 'municipal solid waste **landfills**,' see 40 C.F.R. Part 258, pursuant to Subtitle D of the RCRA. See 42 U.S.C. §§ 6941-6949a. In response, on November 2, 1993, ADEM adopted new regulations incorporating the federal definition of 'municipal solid waste **landfill**,' see 40 C.F.R. § 258.2, as

> " 'a discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in this Rule. A MSWLF [municipal solid waste **landfill**] unit also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, industrial solid waste, construction/demolition waste and/or rubbish. Such a **landfill** may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion....'

"Ala. Admin. Code (ADEM), Rule 335-13-1-.03 (1993) (a substantially similar definition is currently found in Ala. Admin. Code (ADEM), Rule 335-13-1-.03(88)). ADEM further clarified in the definition that '[a] municipal solid waste **landfill** is a sanitary **landfill**.' Id.

"In 1993, ADEM also amended Rule 335-13-4-.22(1) to provide:

> " '(a) All waste [deposited at a municipal solid waste **landfill**] shall be covered as follows:
>
> > " '1. A minimum of six inches of compacted earth or other alternative cover material that includes but is not limited to foams, geosynthetic or waste products, and is approved by [ADEM] shall be added at the conclusion of each day's operation or as otherwise approved by [ADEM] to control disease vectors, fires, odors, blowing litter, and scavenging.' [7]

"Ala. Admin. Code (ADEM), Rule 335-13-4-.22(1)(a)1. (1993) (bracketed language and emphasis added). ADEM furthermore introduced the terms 'construction/demolitioninert **landfill**' and 'industrial **landfill**,' see Ala. Admin. Code (ADEM), Rule 335-13-1-.03 (1993) (the definitions for these terms can now be found at Rule 335-13-1-.03(28) and (67)), and recognized that those types of **landfills** could use alternative-cover materials by amending Rule 335-13-4-.23(1) to provide:

***4** > " '(a) All waste [deposited at a construction/demolition-inert **landfill** or industrial **landfill**] shall be covered as follows:
>
> > " '1. A minimum of six inches of compacted earth or other alternative cover material that includes but is not limited to foams, geosynthetic or waste products, and is approved by [ADEM] shall be added at the conclusion of each day's operation or as otherwise approved by [ADEM] to control disease vectors, fires, odors, blowing litter, and scavenging.'

"Rule 335-13-4-.23(1)(a)1. (1993) (emphasis added). Finally, ADEM amended Rule 335-13-4-.15 to provide that

> " '[d]aily, weekly, or some other periodic cover shall be required at all **landfill** units, as determined by [ADEM].
>
> > " '(1) The suitability and volume of any soils for daily, intermediate and final cover requirements shall be determined by soil borings and analysis.

> " '(2) Any proposal to use alternate cover systems shall be submitted to and approved by [ADEM] prior to implementation.'

"Rule 335-13-4-.15 (emphasis added). Those 1993 amendments established the alternative-materials-cover rules challenged by the appellants in this litigation. The alternative-materials-cover rules have remained in effect since 1993 without substantive change. [8]

"In 2005, the Alabama Legislature adopted ADEM's definition of 'municipal solid waste **landfill**,' providing that '[a] municipal solid waste **landfill** is a sanitary **landfill**.' Ala. Acts 2005, Act No. 2005-302, § 1 (now codified at Ala. Code 1975, § 22-27-2(23)). The Alabama Legislature has not enacted any statute specifically addressing construction/demolition-inert **landfills** or industrial **landfills** but, instead, has maintained the general definition of '**landfill**,' since the inception of the SWDA, as a method of disposing of construction/demolition materials and industrial waste by 'compaction and earth cover.' Ala. Code 1975, § 22-27-2(20).

"As noted earlier, in 2008 the Alabama Legislature renamed the SWDA, and it is now known as the SWRMMA. See Ala. Acts 2008, Act No. 2008-151, § 1. The SWRMMA, as currently drafted, maintains much of the regulatory framework established in the SWDA, including maintaining that ADEM shall have regulatory control over solid-waste disposal. See Ala. Code 1975, § 22-27-7. The SWRMMA continues to define '**landfill**,' see Ala. Code 1975, § 22-27-2(20), and 'sanitary **landfill**,' § 22-27-2(32), as did the SWDA as methods of disposal of solid waste by 'compaction and earth cover' or by 'compact[ing] and cover[ing] with compacted earth.' The SWRMMA also continues to define 'municipal solid waste **landfill**,' as did the 2005 amendment to the SWDA, to provide that '[a] municipal solid waste **landfill** is a sanitary **landfill**.' § 22-27-2(23). As under the SWDA, the SWRMMA provides that 'garbage and rubbish containing garbage shall be disposed of by sanitary **landfill**, approved incineration, composting, or by other means now available or which may later become available as approved by [ADEM].' Ala. Code 1975, § 22-27-3(d).

"In adopting the SWRMMA, the legislature added Ala. Code 1975, § 22-27-10(a), which provides, in pertinent part:

> " 'Solid waste shall be collected, transported, disposed, managed, or any combination thereof, according to the requirements of this article, and the rules of [ADEM] ..., as authorized by this article, and if disposed of in this state, shall be disposed in a permitted **landfill** or permitted incineration, or reduced in volume through composting, materials recovery, or other existing or future means approved by and according to the requirements of [ADEM], under authorities granted by this article.'

***5** "Finally, the 2008 amendments also added Ala. Code 1975, § 22-27-17, which provides, in pertinent part:

> " '(a) Beginning on October 1, 2008, the following disposal fees are levied upon generators of solid waste who dispose of solid waste at solid waste management facilities permitted by [ADEM] subject to this chapter, which shall be collected in accordance with subsection (b):
>
> " '....
>
> " '(4) Regulated solid waste that may be approved by [ADEM] as alternate cover materials in **landfills** shall be assessed the disposal fees applicable in subdivisions (1) and (2).'

"(Emphasis added.)

" Issues

"The appellants request that this court reverse the judgment of the trial court insofar as it granted the director's summary-judgment motion and denied the motion for a summary judgment filed by the appellants. See Mountain Lakes Dist., North Alabama Conference, United Methodist Church, Inc. v. Oak Grove Methodist Church, 126 So. 3d 172, 180 (Ala. Civ. App. 2013) ('Where cross-motions for a summary judgment are filed in the trial court, the party whose motion was not granted is entitled to have that motion reviewed on appeal from the grant of the opponent's motion.'). As framed by the parties, the issues before this court are: (1) whether the appellants have

standing to contest the alternative-cover-materials rules and (2) whether ADEM exceeded its statutory authority in adopting the alternative-cover-materials rules.

"_____

"[5] This court has appellate jurisdiction over appeals 'from administrative agencies.' See Ala. Code 1975, § 12-3-10. Our supreme court has held that this court has ' "exclusive jurisdiction of all appeals involving the enforcement of, or challenging, the rules, regulations, orders, actions, or decisions of administrative agencies," even when the appeal is, in form, an appeal from a circuit court.' Ex parte Mt. Zion Water Auth., 599 So. 2d 1113, 1119 (Ala. 1992) (quoting Kimberly–Clark Corp. v. Eagerton, 433 So. 2d 452, 454 (Ala. 1983)). This appeal lies within this court's exclusive appellate jurisdiction because it arises from a judgment entered by a circuit court adjudicating a challenge to the validity of the rules of an administrative agency.

"[6] The SWDA defined 'garbage' as:

" 'Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, including wastes from markets, storage facilities, handling and sale of produce and other food products, and excepting such materials that may be serviced by garbage grinders and handled as household sewage.'

"Act No. 771, § 1(c) (now codified at Ala. Code 1975, § 22-27-2(11)).

"[7] A 'disease vector' is 'an organism that is capable of transmitting a disease from one host to another.' Ala. Admin. Code (ADEM), Rule 335-13-1-.03(38).

"[8] ADEM revised its administrative code in 1996 and 2018, but those revisions did not alter the alternative-materials-cover rules in any significant aspect."

—— So. 3d at —— (some footnotes omitted).

On appeal, the Court of Civil Appeals concluded that the appellants in the Court of Civil Appeals and the respondents in this Court, Ronald C. Smith, Latonya Gipson, and William T. Gipson, had standing to contest the alternative-cover-materials rules. It then concluded that ADEM had exceeded its statutory authority in adopting the alternative-cover-materials rules. The Court of Civil Appeals reversed the trial court's judgment and remanded the case with instructions that that court enter a summary judgment in favor of the appellants. [1]

***6** The director petitioned this Court for certiorari review of the Court of Civil Appeals' judgment. In his petition, he argued that the Court of Civil Appeals' holding that the respondents had standing to contest the alternative-cover-materials rules conflicted with prior Alabama caselaw. The director also argued that this case presents an issue of first impression as to whether ADEM possessed the statutory authority to authorize the use of ADEM-approved nonearthen cover materials to cover solid waste at **landfills**. This Court granted the petition for a writ of certiorari.

Standard of Review

"In reviewing a decision of the Court of Civil Appeals on a petition for a writ of certiorari, this Court 'accords no presumption of correctness to the legal conclusions of the intermediate appellate court. Therefore, we must apply de novo the standard of review that was applicable in the Court of Civil Appeals.' Ex parte Toyota Motor Corp., 684 So. 2d 132, 135 (Ala. 1996)."

Ex parte Exxon Mobil Corp., 926 So. 2d 303, 308 (Ala. 2005).

"We review a summary judgment by the following standard:

" ' " 'In reviewing the disposition of a motion for summary judgment, we utilize the same standard as that of the trial court in determining whether the evidence before the court made out a genuine issue of material fact' and whether the movant was entitled to a judgment as a matter of law. Bussey v. John Deere Co., 531 So. 2d 860, 862 (Ala. 1988); Rule 56(c), Ala. R. Civ. P. When the movant makes a prima facie showing that there is no genuine issue of material fact,

> the burden then shifts to the nonmovant to present substantial evidence creating such an issue. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797–98 (Ala.1989). Evidence is 'substantial' if it is of 'such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.' West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala.1989)."
>
> " ' Ex parte General Motors Corp., 769 So. 2d 903, 906 (Ala. 1999). When the basis of a summary-judgment motion is a failure of the nonmovant's evidence, the movant's burden, however, is limited to informing the court of the basis of its motion -- that is, the moving party must indicate where the nonmoving party's case suffers an evidentiary failure. See General Motors, 769 So. 2d at 909 (adopting Justice Houston's special concurrence in Berner v. Caldwell, 543 So. 2d 686, 691 (Ala. 1989), in which he discussed the burden shift attendant to summary-judgment motions); and Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986) (stating that "a party seeking summary judgment always bears the initial responsibility of informing the [trial] court of the basis of its motion"). The moving party must support its motion with sufficient evidence only if that party has the burden of proof at trial. General Motors, 769 So. 2d at 909.'
>
> " Rector v. Better Houses, Inc., 820 So. 2d 75, 79–80 (Ala. 2001). Additionally, we 'accept the tendencies of the evidence most favorable to the nonmoving party and must resolve all reasonable doubts in favor of the nonmoving party.' Bruce v. Cole, 854 So. 2d 47, 54 (Ala. 2003)."

Farr v. Gulf Agency, 74 So. 3d 393, 397–98 (Ala. 2011).

Discussion

The director argues that the respondents have not established that they have standing to challenge the alternative-cover-materials rules.

> "The concept of 'standing' refers to a plaintiff's ability to bring the action; the plaintiff must have a legally sufficient interest in that lawsuit, and, if he or she does not, the trial court does not obtain jurisdiction over the case:
>
> ***7** " ' "To say that a person has standing is to say that that person is the proper party to bring the action. To be a proper party, the person must have a real, tangible legal interest in the subject matter of the lawsuit." Doremus v. Business Council of Alabama Workers' Comp. Self–Insurers Fund, 686 So. 2d 252, 253 (Ala. 1996). "Standing ... turns on 'whether the party has been injured in fact and whether the injury is to a legally protected right.' " [State v. Property at] 2018 Rainbow Drive, 740 So. 2d [1025, 1027 (Ala. 1999)] (quoting Romer v. Board of County Comm'rs of the County of Pueblo, 956 P.2d 566, 581 (Colo. 1998) (Kourlis, J., dissenting))(emphasis omitted). In the absence of such an injury, there is no case or controversy for a court to consider. Therefore, were a court to make a binding judgment on an underlying issue in spite of absence of injury, it would be exceeding the scope of its authority and intruding into the province of the Legislature. See City of Daphne v. City of Spanish Fort, 853 So. 2d 933, 942 (Ala. 2003)("The power of the judiciary ... is 'the power to declare finally the rights of the parties, in a particular case or controversy ....' "(quoting Ex parte Jenkins, 723 So. 2d 649, 656 (Ala. 1998)))...." "Town of Cedar Bluff v. Citizens Caring for Children, 904 So. 2d 1253, 1256 (Ala. 2004).

"In determining whether a party has standing in Alabama courts, we are guided by whether the following exist: '(1) an actual, concrete and particularized "injury in fact" -- "an invasion of a legally protected interest"; (2) a "causal connection between the injury and the conduct complained of"; and (3) a likelihood that the injury will be "redressed by a favorable decision." ' Alabama Alcoholic Beverage Control Bd. v. Henri–Duval Winery, L.L.C., 890 So. 2d 70, 74 (Ala. 2003) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)). In their motion to dismiss, the defendants contended that the plaintiffs failed to demonstrate all three of these elements; however, we address primarily one: Whether the complaint sufficiently alleges that the plaintiffs suffered an injury in fact.

" ' "Injury will not be presumed; it must be shown." ' Town of Cedar Bluff, 904 So. 2d at 1256 (quoting Jones v. Black, 48 Ala. 540, 543 (1872)). 'A party's injury must be "tangible," see Reid v. City of Birmingham, 274

Ala. 629, 639, 150 So. 2d 735, 744 (1963); and a party must have "a concrete stake in the outcome of the court's decision." ' Kid's Care, Inc. v. Alabama Dep't of Human Res., 843 So. 2d 164, 167 (Ala. 2002)(quoting Brown Mech. Contractors, Inc. v. Centennial Ins. Co., 431 So. 2d 932, 937 (Ala. 1983)). The plaintiffs 'must allege "specific concrete facts demonstrating that the challenged practices harm [them], and that [they] personally would benefit in a tangible way from the court's intervention." ' Ex parte HealthSouth, 974 So. 2d [288] at 293 [(Ala.2007)] (quoting Warth v. Seldin, 422 U.S. 490, 508, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975) (footnote omitted)). At a minimum, they must show that they personally have suffered some actual or threatened injury as a result of the purportedly illegal conduct. Stiff v. Alabama Alcoholic Beverage Control Bd., 878 So. 2d 1138, 1141 (Ala. 2003)."

Ex parte Merrill, 264 So. 3d 855, 862-63 (Ala. 2018) (footnotes omitted).

In its opinion, the Court of Civil Appeals addressed the standing issue as follows:

"In Keith[v. LeFleur, 256 So. 3d 1206 (Ala. Civ. App. 2018),] this court explained:

" ' "A party establishes standing to bring a ... challenge ... when it demonstrates the existence of (1) an actual, concrete and particularized 'injury in fact' -- 'an invasion of a legally protected interest'; (2) a 'causal connection between the injury and the conduct complained of'; and (3) a likelihood that the injury will be 'redressed by a favorable decision.' Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). A party must also demonstrate that 'he is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers.' Warth [v. Seldin], 422 U.S. [490,] 518, 95 S. Ct. 2197, 45 L. Ed. 2d 343 [(1975)]."

***8** " 'Alabama Alcoholic Beverage Control Bd. v. Henri–Duval Winery, L.L.C., 890 So. 2d 70, 74 (Ala. 2003). See also Ex parte Alabama Educ. Television Comm'n, 151 So. 3d 283, 287 (Ala. 2013).'

"256 So. 3d at 1210-11. Section 41-22-10, Ala. Code 1975, a part of the Alabama Administrative Procedure Act, Ala. Code 1975, § 41-22-1 et seq., incorporates the requirement of standing by providing that

" '[t]he validity or applicability of a rule may be determined in an action for a declaratory judgment or its enforcement stayed by injunctive relief in the circuit court of Montgomery County, unless otherwise specifically provided by statute, if the court finds that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff....'

"(Emphasis added.)

"In Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992), the United States Supreme Court explained that a party asserting standing to contest environmental regulations bears the burden of proving each element of standing. In response to a motion for a summary judgment, the party asserting standing cannot rest on mere allegations, but must set forth specific facts in affidavits or other evidence proving each element of standing. 504 U.S. at 561.

"To meet their burden, the appellants presented evidence in support of their summary-judgment motion indicating that the Stone's Throw **Landfill** and the Arrowhead **Landfill** have been permitted by ADEM to use, and have used, alternative-cover materials in their operations pursuant to the alternative-cover-materials rules adopted by ADEM. The evidence presented by Smith in his affidavit indicates that he lives within 2,500 feet of the Stone's Throw **Landfill**; that he had observed tarps being used as alternative cover at that **landfill**; that he had observed vultures accessing solid waste through holes in those tarps; that the operation of that **landfill** has generated and exposed him on an almost daily basis to offensive odors that have negatively affected his use and enjoyment of his property; that the operation of the **landfill** has exposed him to vultures, feral dogs, and coyotes, among other pests, that have entered his property; and that the value of his property has declined as a result of the operation of that **landfill**.

"The evidence presented by the Gipsons in their affidavits indicates, among other things, that they live within 120 feet of the Arrowhead **Landfill**; that the operation of that **landfill** has generated and exposed them on an almost daily basis to offensive odors that have affected them physically and have negatively affected their use and enjoyment of

their property; that the operation of the **landfill** has exposed them to buzzards and flies, among other pests, that have entered their property; and that the value of their property has declined as a result of the operation of that **landfill**.

"The director asserted in his summary-judgment motion that the appellants had not demonstrated standing because, he argued, they could not show a causal link between their claimed injuries and the alternative-cover materials permitted at the nearby **landfills** from which they were claiming injury. The United States Supreme Court has observed that 'there must be a causal connection between the injury and the conduct complained of -- the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court." ' Lujan, 504 U.S. at 561 (quoting Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 41-42 (1976)).

***9** "The appellants presented evidence indicating that their rights to the use and enjoyment of their properties had been adversely affected by the operation of the **landfills** near their homes and that those **landfills** have been authorized to use, and have used, alternative-cover materials in lieu of earth cover or compacted earth. The director argues that the appellants did not prove specifically that they suffered increased adverse environmental impacts due to the use of alternative-cover materials in lieu of earth cover or compacted earth. We conclude that this argument is misplaced. In order to have standing to contest the alternative-cover-materials rules, the appellants did not have to prove that the alternative-cover materials were not as effective as earth cover or compacted earth at controlling odors, disease vectors, and other harmful environmental effects of solid-waste disposal. They only had to present substantial evidence indicating that the use of alternative-cover materials was causing or threatening to cause injury to their private-property interests, which they did. Compare Student Pub. Interest Research Grp. of New Jersey, Inc. v. Tenneco Polymers, Inc., 602 F. Supp. 1394, 1397 (D.N.J. 1985) (holding that the plaintiffs in that case had proved standing by showing that pollution of waters had adversely affected their interests and stating that the plaintiffs were not required to further prove the degree of pollution caused by particular discharges in order to maintain standing). We conclude that the appellants have presented sufficient evidence from which it can be reasonably inferred that the use of alternative-cover materials at the Arrowhead **Landfill** and the Stone's Throw **Landfill** 'interferes with or impairs, or threatens to interfere with or impair,' the appellants' legal rights or privileges. See § 41-22-10 and Medical Ass'n of State of Alabama v. Shoemake, 656 So. 2d 863, 865-68 (Ala. Civ. App. 1995) (discussing the 'liberal construction' of § 41-22-10). Therefore, the appellants have established standing to challenge the alternative-cover-materials rules.

"In Massachusetts v. Environmental Protection Agency, 549 U.S. 497, 518 (2007), the United States Supreme Court stated, in pertinent part:

> " 'When a litigant is vested with a procedural right, that litigant has standing if there is some possibility that the requested relief will prompt the injury-causing party to reconsider the decision that allegedly harmed the litigant. [Lujan v. Defenders of Wildlife, 504 U.S. 555, 572 n.7 (1992)]; see also Sugar Cane Growers Cooperative of Fla. v. Veneman, 289 F.3d 89, 94–95 (C.A.D.C. 2002) ("A [litigant] who alleges a deprivation of a procedural protection to which he is entitled never has to prove that if he had received the procedure the substantive result would have been altered. All that is necessary is to show that the procedural step was connected to the substantive result").'

"In Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59 (1978), the United States Supreme Court considered the standing of certain landowners who lived in close proximity to nuclear-power plants to contest an act limiting the liability of the owners of those plants in the event of a single nuclear accident. The Supreme Court concluded that, because the nuclear-power plants that were allegedly injuring the landowners would not have been in operation absent the act at issue, the injury suffered by the landowners would likely be redressed by the invalidation of the act. 438 U.S. at 77-78. Thus, it held that the landowners had standing to contest the act. Id.

> "The appellants in the present case have presented evidence indicating that the Stone's Throw **Landfill** and the Arrowhead **Landfill** each qualify as a municipal solid-waste

> landfill, an industrial landfill, and a construction/demolitioninert landfill. The appellants have further presented evidence indicating that ADEM approved the use of materials other than earth cover or compacted earth to cover solid waste at the landfills pursuant to the permitting process outlined in Rule 335–13–4–.15(2). It is undisputed that ADEM relies exclusively on Rule 335–13–4–.22(1)(a)1. and Rule 335–13–4–.23(1)(a)1. to permit the use of alternative-cover materials at municipal solid-waste landfills and industrial and construction/demolition-inert landfills, respectively. Thus, like in Duke Power Co., the appellants in this case have shown a likelihood that, but for the rules pursuant to which the permits for the use of alternative-cover materials had been granted, the Stone's Throw Landfill and the Arrowhead Landfill would not have been permitted to use alternative-cover materials in their daily operations. Accordingly, we conclude that the appellants have demonstrated standing to challenge ADEM's alternative-cover-materials rules, and we hold that the trial court erred in granting [the director's] motion for a summary judgment and in denying the appellants' motion for a summary judgment on the ground that the appellants lacked standing."

***10** —— So. 3d at ———— (footnotes omitted).

In its opinion, the Court of Civil Appeals stated that the respondents did not have to prove that the alternative-cover materials were not as effective as earth cover or compacted earth at controlling odors, disease vectors, and other harmful environmental effects of solid-waste disposal. It went on to assert that the respondents "only had to present substantial evidence indicating that the use of alternative-cover materials was causing or threatening to cause injury to their private-property interests, which they did." —— So. 3d at ——.

In this case, the respondents presented evidence about how the operation of the landfills near their houses had negatively impacted them and had negatively impacted their use and enjoyment of their land. The respondents went on to allege that the use of alternative-cover materials threatened to result in the generation of more frequent and more offensive odors and disease vectors and threatened to expose them to more offensive odors and disease vectors.

During his deposition, Eric Sanderson, the chief of the solid-waste branch of the land division of ADEM, testified that , during the comment period for the most recent landfill permit for the Arrowhead Landfill, ADEM had received complaints about odors, wild dogs, insects, flies, buzzards, and other unwanted pests. In its response to those comments, ADEM stated:

> " To date the ADEM inspectors had not noted any odors or disease vectors from the Arrowhead Landfill that would be considered uncommon to typical municipal solid waste landfills."

Subsequently, the following occurred:

> "[Plaintiffs' Counsel:] Does it state that there -- or does it even imply that there are no objectionable odors coming from the landfill?
>
> "[Sanderson:] No. There are odors coming from the landfill.
>
> "[Plaintiffs' Counsel:] There are odors?
>
> "[Sanderson:] Yes -- I mean, there could be odors coming from the landfill.
>
> "[Plaintiffs' Counsel:] Okay. As well as disease vectors, right?
>
> "[Sanderson:] Yes.
>
> "[Plaintiffs' Counsel:] In fact, odors and disease vectors are typical around landfills, aren't they?

> "[Sanderson:] I would say in some form or fashion, I would not be surprised to smell an odor or see a vector -- disease vector."

Sanderson further testified that, during the renewal of the permit for Stone's Throw **Landfill**, ADEM had "received a couple of complaints about the odor and whatnot." In its response to the comments, ADEM stated:

> "[T]o date the ADEM inspectors have not noted any odors or disease vectors from the Stone's Throw **Landfill** that we -- [that] would be considered uncommon to typical municipal solid waste (MSW) **landfills**."

Sanderson agreed that, in its response, ADEM was not saying that the person complaining did not experience odors and disease vectors. He went on to state: "And I also want to point out that the subtitle D regulations nor state regulations stipulate no odor. All the regulations stipulate is methods to control the odor." Sanderson stated that he was familiar with ADEM's air-pollution-and-control rules and regulations and that they did not stipulate no odor. When asked if the rules and regulations describe some prohibited odor, Sanderson replied: "No. They describe odor as a contaminant, but they -- in air regulations, they do not stipulate specific odor thresholds or limits per se." After Sanderson testified that there is no numerical threshold or limits, the following occurred:

> ***11** "[Plaintiffs' Counsel:] And they do describe the effects of odors that are prohibited, don't they?
>
> "....
>
> "[Plaintiffs' Counsel] Such as odors that cause headaches or nausea or interfere with sleep, that sort of thing?
>
> "[Sanderson:] Correct. But there's not a specific threshold --
>
> "....
>
> "[Sanderson:] -- to measure that."

According to Sanderson's testimony, the rules and regulations regarding **landfills** do not require the elimination of all odor or disease vectors at **landfills**; also, the rules and regulations provide for methods to control odors. Additionally, he testified that he would expect some disease vectors near **landfills**.

In this case, the respondents did not challenge the operation of the Arrowhead **Landfill** and the Stone's Throw **Landfill**. Rather, they challenged the rules that allowed the use of alternative-cover materials instead of earth or compacted-earth cover. Thus, the respondents must show a causal connection between the rules authorizing the use of alternative-cover materials and the alleged injury. Without presenting evidence that alternative-cover materials are not as effective as earth or compacted earth in controlling odors and disease vectors, they cannot establish that the negative impacts they have already suffered were fairly traceable to the alternative-cover-materials rules at issue and were not merely the result of the operation of a **landfill**. Also, they cannot establish that the use of alternative-cover materials threatens to result in the generation of more frequent and more offensive odors and disease vectors or that they will be exposed to more frequent and more offensive odors and disease vectors. Additionally, without such a showing, the respondents cannot establish that there is a likelihood that their injuries will be redressed by a favorable decision. If earth and compacted-earth covers are not more effective than the approved alternative-cover materials in controlling odors and disease vectors, the respondents would continue to suffer the same negative impacts from the **landfills** even if ADEM no longer permitted the use alternative-cover materials. Thus, the Court of Civil Appeals erroneously held that, for purposes of establishing standing, the respondents were not required to present substantial evidence that alternative-cover materials were less effective than earth or compacted earth in controlling odors and disease vectors.

Next, we must determine whether the respondents did present substantial evidence to establish that the use of alternative-cover materials was not as effective in controlling odors and disease vectors as using earth or compacted earth.

The respondents submitted affidavits from Smith and the Gipsons to support their argument that they had standing to bring this case.[2] In their affidavits, the respondents included factual allegations regarding the negative impact the operation of the **landfills** had had on them and on their use

and enjoyment of their property. However, they did not allege any facts to establish that those negative impacts were actually caused by the use of alternative-cover materials and that they would not have experienced those negative impacts had those **landfills** used earth or compacted earth as cover.

***12** The respondents presented evidence indicating that, since October 2001, Stone's Throw **Landfill** had been authorized to use alternative-cover materials, including tarps. However, the respondents did not present any evidence as to when Stone's Throw **Landfill** started using alternative-cover materials. If Stone's Throw **Landfill** has been continuously using tarps since that time, Smith, who has resided near the **landfill** since 2004, would have no firsthand knowledge as to whether the use of tarps had resulted in an increase in odors and disease vectors. At most, in his September 6, 2018, affidavit, Smith asserted that he had observed tarps being used at that **landfill** "on many occasions during the last three years." Based on Smith's affidavit, it is not clear whether the Stone's Throw **Landfill** used tarps continuously during that three-year period or whether the use of tarps was occasional. Further, Smith did not include any allegation that he had noticed any increase in odors or disease vectors during that period. [3]

The respondents also submitted affidavits from Latonya Gipson and William Gipson. In her affidavit, Latonya asserted that her residence was less than 500 feet from the Arrowhead **Landfill** and that she had lived there since 2005. In his affidavit, which was dated September 5, 2018, William stated that he had lived at that residence for 10 years. The respondents presented evidence indicating that, in 2009, ADEM authorized the Arrowhead **Landfill** to use alternative-cover materials, including tarps. Latonya and William both stated that they did not know whether tarps had been used at the Arrowhead **Landfill**. In his deposition, Sanderson testified that he had been told that tarps had been used at the Arrowhead **Landfill**. However, neither Latonya nor William testified that he or she had observed any increase in odors or disease vectors at any time after ADEM authorized the Arrowhead **Landfill** to use alternative-cover materials. Therefore, the respondents have not presented any facts to support their opinion that the use of alternative-cover materials threatens to increase their exposure to odors and disease vectors or to support their opinion that alternative-cover materials are less effective than earth or compacted earth at controlling odors and disease vectors. Although the respondents' opinions might constitute some evidence of a causal connection between the alternative-cover-materials rules and their claimed injuries, such unsupported opinions do not rise to the level of substantial evidence.

In its opinion, the Court of Civil Appeals also relied on the United States Supreme Court's decision in Massachusetts v. Environmental Protection Agency, 549 U.S. 497, 127 S.Ct. 1438, 167 L.Ed.2d 248 (2007), to support its holding that the respondents had standing to challenge the alternative-cover-materials rules. In that case, the Supreme Court stated:

> "To ensure the proper adversarial presentation, Lujan[v. Defenders of Wildlife, 504 U.S. 555 (1992),] holds that a litigant must demonstrate that it has suffered a concrete and particularized injury that is either actual or imminent, that the injury is fairly traceable to the defendant, and that it is likely that a favorable decision will redress that injury. See id., at 560–561. However, a litigant to whom Congress has 'accorded a procedural right to protect his concrete interests,' id., at 572, n. 7, ... 'can assert that right without meeting all the normal standards for redressability and immediacy,' ibid. When a litigant is vested with a procedural right, that litigant has standing if there is some possibility that the requested relief will prompt the injury-causing party to reconsider the decision that allegedly harmed the litigant. Ibid.; see also Sugar Cane Growers Cooperative of Fla. v. Veneman, 289 F.3d 89, 94–95 (C.A.D.C.2002) ('A [litigant] who alleges a deprivation of a procedural protection to which he is entitled never has to prove that if he had received the procedure the substantive result would have been altered. All that is necessary is to show that the procedural step was connected to the substantive result')."

***13** 549 U.S. at 517–18, 127 S.Ct. 1438 (emphasis added). However, the respondents do not challenge the alternative-cover-materials rules based on the deprivation of a procedural right that has been afforded to them. Additionally, the Court of Civil Appeals does not point to any specific procedural right that has been implicated in this case. Therefore, the Court of Civil Appeals' reliance on Massachusetts v. Environmental Protection Agency is misplaced.

The Court of Civil Appeals also cites Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59,

98 S.Ct. 2620, 57 L.Ed.2d 595 (1978). In that case, Duke Power Company, an "investor-owned pubic utility" that was constructing nuclear power plants in North Carolina and South Carolina, was sued by Carolina Environmental Study Group, Inc., the Catawba Central Labor Union, and 40 individuals who lived in close proximity to the planned nuclear facilities. The plaintiffs in that case sought a judgment declaring that the Price-Anderson Act, which limited liability in the event of a nuclear incident causing damages, was unconstitutional. In addressing the issue whether the plaintiffs had standing to challenge the constitutionality of the Price-Anderson Act, the Supreme Court stated:

> "The essence of the standing inquiry is whether the parties seeking to invoke the court's jurisdiction have 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.' Baker v. Carr, 369 U.S. 186, 204 [82 S.Ct. 691, 7 L.Ed.2d 663] (1962). As refined by subsequent reformulation, this requirement of a 'personal stake' has come to be understood to require not only a 'distinct and palpable injury,' to the plaintiff, Warth v. Seldin, 422 U.S. 490, 501 (1975), but also a 'fairly traceable' causal connection between the claimed injury and the challenged conduct. Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252, 261 [97 S.Ct. 555, 50 L.Ed.2d 450] (1977). See also Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 41–42 (1976); Linda R. S. v. Richard D., 410 U.S. 614, 617 [93 S.Ct. 1146, 35 L.Ed.2d 536] (1973). Application of these constitutional standards to the factual findings of the District Court persuades us that the Art. III requisites for standing are satisfied by appellees."

Duke Power Co., 438 U.S. at 72, 98 S.Ct. 2620. In addressing whether the plaintiffs in that case had established distinct and palpable injuries, the Supreme Court stated:

> "For purposes of the present inquiry, we need not determine whether all the putative injuries identified by the District Court, particularly those based on the possibility of a nuclear accident and the present apprehension generated by this future uncertainty, are sufficiently concrete to satisfy constitutional requirements. Compare O'Shea v. Littleton, 414 U.S. 488 [94 S.Ct. 669, 38 L.Ed.2d 674] (1974), with United States v. SCRAP, 412 U.S. 669 [93 S.Ct. 2405, 37 L.Ed.2d 254] (1973). See also Conservation Society of Southern Vermont v. AEC, Civ. Action No. 19–72 (DC Apr. 17, 1975). It is enough that several of the 'immediate' adverse effects were found to harm appellees. Certainly the environmental and aesthetic consequences of the thermal pollution of the two lakes in the vicinity of the disputed power plants is the type of harmful effect which has been deemed adequate in prior cases to satisfy the 'injury in fact' standard. See United States v. SCRAP, supra. Cf. Sierra Club v. Morton, 405 U.S. 727, 734 [92 S.Ct. 1361, 31 L.Ed.2d 636] (1972). And the emission of non-natural radiation into appellees' environment would also seem a direct and present injury, given our generalized concern about exposure to radiation and the apprehension flowing from the uncertainty about the health and genetic consequences of even small emissions like those concededly emitted by nuclear power plants.
>
> ***14** "The more difficult step in the standing inquiry is establishing that these injuries 'fairly can be traced to the challenged action of the defendant,' Simon v. Eastern Ky. Welfare Rights Org., supra, 426 U.S. at 41, or put otherwise, that the exercise of the Court's remedial powers would redress the claimed injuries. 426 U.S. at 43. The District Court discerned a 'but for' causal connection between the Price-Anderson Act, which appellees challenged as unconstitutional, 'and the construction of the nuclear plants which the [appellees] view as a threat to them.' [Carolina Environmental Study Group, Inc. v. U.S. Atomic Energy Commission] 431 F. Supp. [203,] 219 [(W.D. N.C. 1977)]. Particularizing that causal link to the facts of the instant case, the District Court concluded that 'there is a substantial likelihood that Duke [Power] would not be able to complete the construction and maintain the operation of the McGuire and Catawba Nuclear Plants but for the protection provided by the Price-Anderson Act.' Id., at 220.
>
> > "These findings, which, if accepted, would likely satisfy the second prong of the constitutional test for standing as elaborated in Simon, are challenged on two grounds. First, it is argued that the evidence presented at the hearing, contrary to the conclusion reached by the District Court, indicated that the

> McGuire and Catawba nuclear plants would be completed and operated without the Price-Anderson Act's limitation on liability. And second, it is contended that the Price-Anderson Act is not, in some essential sense, the 'but for' cause of the disputed nuclear power plants and resultant adverse effects since if the Act had not been passed Congress may well have chosen to pursue the nuclear program as a Government monopoly as it had from 1946 until 1954. We reject both of these arguments."

Duke Power Co., 438 U.S. at 73–75, 98 S.Ct. 2620.

In this case, the Court of Civil Appeals concluded:

> "The appellants in the present case have presented evidence indicating that the Stone's Throw **Landfill** and the Arrowhead **Landfill** each qualify as a municipal solid-waste **landfill**, an industrial **landfill**, a n d a construction/demolition-inert **landfill**. The appellants have further presented evidence indicating that ADEM approved the use of materials other than earth cover or compacted earth to cover solid waste at the **landfills** pursuant to the permitting process outlined in Rule 335–13–4–.15(2). It is undisputed that ADEM relies exclusively on Rule 335–13–4–.22(1)(a)1. and Rule 335–13–4–.23(1)(a)1. to permit the use of alternative-cover materials at municipal solid-waste **landfills** and industrial and construction/demolition-inert **landfills**, respectively. Thus, like in Duke Power Co., the appellants in this case have shown a likelihood that, but for the rules pursuant to which the permits for the use of alternative-cover materials had been granted, the Stone's Throw **Landfill** and the Arrowhead **Landfill** would not have been permitted to use alternative-cover materials in their daily operations."

Smith, —— So. 3d at —— (footnote omitted). However, the respondents have not presented substantial evidence to establish that the alternative-cover materials are less effective than earth or compacted earth in controlling odors or disease vectors. Thus, they have not established that, but for the rules permitting the use of alternative-cover materials, they would be exposed to less frequent and less offensive odors and fewer disease vectors from the **landfills** in question.

Conclusion

Based on the foregoing, the respondents did not present substantial evidence to establish that they had standing to challenge the alternative-cover materials rules. Therefore, the trial court properly granted the director's motion for a summary judgment and properly denied the respondents' motion for a summary judgment. Accordingly, we reverse the Court of Civil Appeals' judgment and remand this case for proceedings consistent with this opinion.

***15** REVERSED AND REMANDED.

Parker, C.J., concurs.

Bryan, Sellers, Mendheim, and Stewart, JJ., concur in the result.

Bolin and Shaw, JJ., dissent.

Mitchell, J., recuses himself.

BRYAN, Justice (concurring in the result).

Ronald C. Smith, Latonya Gipson, and William T. Gipson, the plaintiffs, challenge rules permitting alternative-cover materials in **landfills** on the basis that those rules conflict with § 22-27-2, Ala. Code 1975. However, that statute was recently amended to permit the use of alternative-cover materials in **landfills**. Thus, even if the plaintiffs are correct in arguing that the rules conflict with the previous version of § 22-27-2, they would not be entitled to any meaningful relief because alternative-cover materials are now permitted under that statute. In practical terms, a successful argument by the plaintiffs on the merits would not prevent the **landfill** operators in this case from using alternative-cover materials. Thus, I believe this case is moot. "[A] matter is moot where 'there is no effective remedy upon which relief can be granted' based on subsequent events." Ex parte Carter, 275 So. 3d 115, 123 (Ala. 2018) (quoting AIRCO, Inc. v. Alabama Pub. Serv. Comm'n, 360 So. 2d 970, 971 (Ala. 1978)). "A case is moot when there is no real controversy and it seeks to determine an abstract question which does not rest on existing

facts or rights." State ex rel. Eagerton v. Corwin, 359 So. 2d 767, 769 (Ala. 1977) (emphasis omitted).

The main opinion concludes that the plaintiffs lack standing, and it reverses the judgment of the Court of Civil Appeals and remands the case. Both standing and mootness are categories of justiciability. Ex parte Richardson, 957 So. 2d 1119, 1125 (Ala. 2006) (stating that standing is an essential component of justiciability); Town of Elmore v. Town of Coosada, 957 So. 2d 1096, 1100 (Ala. 2006) (stating that mootness implicates justiciability); and 13 Charles Alan Wright et al., Federal Practice and Procedure § 3529, at 278-79 (2d ed. 1984) (stating that standing and mootness are categories of justiciability). Thus, by concluding that this case is moot, I agree with the main opinion that there is not a justiciable controversy here, albeit for a different reason. Typically, this Court would dismiss an appeal or a petition in a moot case. However, the judgment of the Court of Civil Appeals, which decided the case on the merits in favor of the plaintiffs, should be vacated, either by this Court or by the Court of Civil Appeals, based on the lack of justiciability. Thus, I have no problem reversing that judgment and remanding the case only for the purpose of restoring jurisdiction to the Court of Civil Appeals so that court may vacate its judgment and dismiss the appeal. Such action by the Court of Civil Appeals on remand would seem to be the only action that would be consistent with the main opinion. Thus, I concur in the result.

Stewart, J., concurs.

SHAW, Justice (dissenting).

I believe that the standing analysis in the Court of Civil Appeals' unanimous opinion is correct; therefore, I respectfully dissent from reversing that court's decision and remanding the case. Nevertheless, during the pendency of this appeal following the issuance of the Court of Civil Appeals' opinion, the legislature amended the Code sections at issue to allow the alternate-cover materials approved by the Alabama Department of Environmental Management ("ADEM"). The trial court cannot force ADEM to comply with now superseded law and thus cannot afford the plaintiffs any relief. Therefore, I believe that this appeal is due to be dismissed as moot. See Irwin v. Jefferson Cnty. Pers. Bd., 263 So. 3d 698, 704 (Ala. 2018) (dismissing an appeal of a judgment denying a claim for injunctive relief that had become moot).

Bolin, J., concurs.

All Citations

--- So.3d ----, 2020 WL 6536081

Footnotes

1 After the Court of Civil Appeals released its decision in Smith, the legislature enacted Act No. 2020-30, Ala. Acts 2020, which amended the definitions in § 22-27-2 to include a definition for "alternative cover," i.e., "material other than earth used to cover a **landfill** or sanitary **landfill**." However, those amendments did not include any retroactivity provisions and did not address the issue of the validity of the previously enacted alternative-cover-materials rules at issue in this case.

2 In his brief to this Court, the director asserts that portions of the respondents' affidavits were inadmissible and should have been stricken. The director asserts that he moved to strike certain portions of those affidavits but that the trial court did not rule on that motion. The trial court's order does not indicate whether the trial court considered such evidence. Additionally, in its opinion, the Court of Civil Appeals did not address the issue whether the trial court should have granted the motion to strike. Rather, it stated that it had reached its determination that the respondents had standing without regard to the respondents' assertions that the use of tarps as was not effective as the use of earthen cover. Although the director noted in his petition for a writ

of certiorari that he had moved to strike the affidavits in the trial court, he did not raise this issue as a ground for review in his petition. Therefore, we will not consider this argument.

3 In his affidavit, Smith asserted that, in June 2016, he had observed vultures accessing solid waste beneath the tarps at the Stone's Throw **Landfill** because the tarps had holes in them. He further asserted that the tarps did not completely cover the solid waste. However, whether the tarps had holes in them and whether the solid waste was completely covered appear to implicate the actions of the operator of the Stone's Throw **Landfill** in covering the solid waste. As the Supreme Court stated in Lujan v. Defenders of Wildlife, 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992), "the injury has to be 'fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court.' " 504 U.S. at 560, 112 S.Ct. 2130 (quoting Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 41-42, 96 S.Ct. 1917, 48 L.Ed.2d 450 (1976)). Further, an allegation that Smith had observed such an occurrence on only one occasion in a three-year period does not rise to the level of substantial evidence that alternative-cover materials are not as effective in controlling odors and disease vectors as are earth and compacted earth.

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