

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

CARTER CARROLL and  
KIM BRADLEY

**FILED**

MAY 14 2015

PLAINTIFFS

VS.

CAUSE NO. CI 14-0212

JOHNNY L. DUPREE, *in his official*  
*capacity as Mayor of the City of Hattiesburg*

*Forrest County Clerk*  
FORREST COUNTY CIRCUIT CLERK

DEFENDANT

**PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND COSTS**

COME NOW Plaintiffs, Carter Carroll and Kim Bradley, and file their Motion for Attorney's fees and costs, and for cause thereof would show unto the Court the following:

**I. Brief Facts and Procedural History**

Throughout the pendency of this litigation, the Court has issued two orders of mandamus, directing the Defendant to comply with his duties under Miss. Code Ann. §11-41-1 *et seq.*, the latest of which states plainly as follows: "Should any person who may be submitted by the Mayor to the City Council fail to be confirmed by the Council, then the Mayor shall forthwith submit another name of a duly qualified person for that position." (Emphasis supplied.).

Since his reelection in 2013, Defendant has placed twenty-four (24) nominees before the City Council for the seventeen (17) available positions. The vast majority of nominees were presented only after filing of the Complaint for Mandamus in this action. Moreover, the majority of Defendant's submissions of candidates who are qualified for their respective positions according to the city ordinances also came only after the inception of this action. Of his nominations, the Council has now approved sixteen (16) – leaving the position of Chief of Police still vacant.

The last time Defendant submitted nominees to the City Council was April 28, 2015 – more than sixteen (16) days ago. On that date, the board voted to approve the Defendant's nominees for

City Clerk and City Attorney – a vote which the Defendant's actions have stalled for nearly two years. The Defendant made no effort to place any more names before the Council at the most recent meeting on May 5, 2015. Finally, on May 7, 2015, this Court found the Defendant in contempt, and ordered that the Defendant show cause in defense of his contempt on May 21, 2015.

The Defendant has persisted in his efforts to delay and avoid his statutory obligations. If the mere passage of time were not enough to persuasively demonstrate Defendant's intent to stall these proceedings, consider this: Defendant filed an appeal with the Mississippi Supreme Court on February 13, 2015, then moved to stay these proceedings pending the outcome of that appeal. Plaintiffs moved to docket and dismiss the appeal, as it was a fundamentally unsound attempt to take a direct appeal from an interlocutory order, and clearly contrary to established Mississippi law. *Bowen v. Clark*, 239 Miss. 182, 121 So. 2d 624 (Miss. 1960) (holding that a motion to dismiss appeal must be sustained where plaintiff appealed from an order on a petition to intervene because such appeal was not from a final disposition of the issues).

Plaintiffs' motion to dismiss was granted on April 7, 2015. Regardless of the efficacy (or not) of Defendant's ill-fated attempt at an appeal, there was nothing staying Defendant's obligation to comply with this Court's orders, and the Defendant has yet to fully comply with the same. Moreover, the Defendant has failed to withdraw his meritless motion to stay in this Court, even after the Mississippi Supreme Court dismissed his appeal.

## **II. Authority and Argument**

### **A. Clear Violation of Mayoral Duties**

Miss. Code Ann. §21-8-23(2) requires the Defendant, in his capacity as mayor, to submit department directors to the City Council for confirmation at the beginning of a new term of office. Perhaps the most bewildering thing about this case is the fact that the Defendant has

persisted in his behavior despite the prior ruling in the case of *DuPree v. Carroll*, 967 So.2d 27 (Miss. 2007), a copy of which is attached to the Complaint in this matter. If there was any doubt about what the Mayor is supposed to do, or when he is supposed to do it, all of those doubts were dispelled by the Supreme Court in that opinion:

Mississippi Code Section 21-8-23 (2) requires that a mayor must resubmit directors for approval by the council at the beginning of the new term of office, even if the director is a holdover from the previous term and has been previously approved by the council. The judgment of the Forrest County Circuit issuing an order of mandamus to compel the Mayor of Hattiesburg to resubmit directors to the city council is affirmed. The mayor shall forthwith submit department heads for approval by the council.

*Id.* at 31-32. Neither the statute (Miss. Code Ann. §21-8-23(2)) nor the rule of law confirmed in *DuPree v. Carroll* have been amended or modified, thus the mandate of the law is clear.

Moreover, Chapter 2, Article I, Section 2.7(B) of the Ordinances of the City of Hattiesburg states as follows:

The City shall give preference to any qualified candidate for employment with the City whose principal residence is within the corporate limits of the City of Hattiesburg or the proposed territory to be annexed by the City, as described in Ordinance Number 2261, over any other qualified candidate.

The Defendant has ignored this valid City ordinance time and again in his nominations. For instance, of the eight (8) nominees who have not been approved by the Council, seven (7) were non-residents of the City of Hattiesburg.<sup>1</sup> It is plain that the Defendant, in his capacity as mayor and out of service to the taxpayers, should follow the law and make reasonable efforts to nominate persons in compliance with the cited ordinance, and in accordance with this Court's May 7, 2015 finding of contempt, it is plain that the Defendant has failed at those tasks.

---

<sup>1</sup> Crystal Wise Martin, Mitchell Dent, Ramel Cotton, Jimmie Gardiner, Kristi Martin Moore, Charles "C.J." Lawrence III, Catouche J.L. Body.

B. Personal Liability for *Ultra Vires* Actions

Black's Law Dictionary defines *ultra vires* as "unauthorized; beyond the scope of power allowed or granted by a corporate charter or by law." In *Richardson v. Canton Farm Equipment, Inc.*, 608 So.2d 1240, 1257 (Miss. 1992), the Mississippi Supreme Court upheld a trial court's ruling that two members of the Madison County Board of Supervisors were personally liable for actual damages incurred by the county where the supervisors, on multiple occasions, disregarded the statutory process for accepting bids on purchases made by the county in order to obtain farm equipment from a company they personally preferred but who did not make the lowest bid.

The *Richardson* Court held that the supervisors acted *ultra vires* by repeatedly ignoring the statutory bid process, that they were not entitled to the standard immunity from suit held by public officials due to their actions which were clearly outside of their discretionary authority as supervisors, and ordered that the supervisors personally pay actual damages related to their actions, as well as reasonable attorney's fees and expenses. *Id.* Regarding the legal fees for the defense of the supervisors, the Court explained that "where there is no reasonable basis for a defense, and/or where the board members proceed in bad faith, they act *ultra vires* and have no power to expend public funds for defense. In such cases, the court should order that any such defense be at their own expense and that any public funds expended be reimbursed." *Id.* at 1253. Thus, the *Richardson* Court ordered that the supervisors personally repay to the county one-half of all reasonable attorney's fees and legal expenses incurred for their defense. *Id.* at 1256-1257.

Moreover, considering the trial court's denial of Canton Farm Equipment, Inc.'s request for attorney's fees and expenses, the court noted that "it is clear the circuit court did so [denied plaintiff's request for attorney's fees] because it thought it had no authority to make such an award." However, the *Richardson* court made clear that authority does exist for awarding

attorney's fees, stating "we have long recognized, however, that a trial court may award attorney's fees where the evidence is such that it justifies an award of punitive damages." *Id.* at 1256. The *Richardson* Court further noted the case of *Smith v. Dorsey*, 599 So.2d 529 (Miss. 1992) in which it affirmed a lower court's award of plaintiff's attorney's fees and expenses where school board members authorized illegal contracts. See also, *Pearl River Water Valley Supply District v. Hinds County*, 445 So.2d 1330 (Miss. 1984).

Here, the Defendant has exhibited a clear pattern of delay and contumacious contempt for this Court's orders. It is plain that the Defendant has done and will do anything to frustrate the legitimate orders of this Court. As such, the Defendant has abandoned the duties of his office as Mayor and has acted *ultra vires* in refusing to follow the law which has been made clear to him on more than one occasion, by more than one court of this state.

When the Defendant refuses to submit competent nominees and continually delays the process of this Court, he purposefully forfeits any protection his position of mayor might afford him, and, therefore, he proceeds in his individual capacity. It could hardly be said that a competent public official acts within the course and scope of his duties when he or she continuously and systematically refuses to discharge the duties of that office by failing to follow the law of the state and plain orders of the Court. Just as the *Richardson* court stated "it is hard to understand on what basis the supervisors may reasonably have thought they might defend their giving the bid to Tubb-Williamson in the way they did," it is also hard to understand here how the Defendant reasonably believes he can defend his actions of deliberate disregard for the orders of this Court and the laws of the state. *Id.* at 1253.

Compared to the actions of the supervisors in *Richardson* of ignoring the bidding process to allow their preferred company to supply two backhoes, the actions of the Defendant in failing,

for two years, to submit qualified candidates for city positions in an effort to unlawfully keep hold-overs in office – in the face of an abundance of guidance making clear the impropriety of his actions, some of which was previously sought by the Defendant himself – the actions of the Defendant can be seen for their true repugnance. Because of its distaste for the supervisors' actions, the *Richardson* court upheld monetary penalties against the supervisors pursuant to Miss. Code Ann. §§ 19-13-37(1) and 31-7-57(1). *Id.* at 1252-53.

While Miss. Code Ann. §19-13-37(1) specifically allows penalties for infractions related to the bidding process, Miss. Code Ann. §31-7-57(1) provides the following:

Any elected or appointed public officer of an agency or a governing authority, or the executive head, any employee or agent of an agency or governing authority, who appropriates or authorizes the expenditure of any money to an object not authorized by law, shall be liable personally for up to the full amount of the appropriation or expenditure as will fully and completely compensate and repay such public funds for any actual loss caused by such appropriation or expenditure, to be recovered by suit in the name of the governmental entity involved, or in the name of any person who is a taxpayer suing for the use of the governmental entity involved.

If two supervisors who merely cost the county approximately \$27.00 per month by accepting a contract for a higher amount than necessary are susceptible to a monetary penalty, the actions of the Defendant are clearly severe enough to warrant, *at least*, his personal reimbursement of fees for his defense in this action and for payment of Plaintiffs' reasonable attorney's fees and expenses.

The Defendant's actions over the nearly two years since his re-election are motivated not out of a sense of obligation to his duty as mayor, but by personal passions and desires. His steadfast and obstinate refusal to comply with this Court's orders, as well as his pursuit of a fundamentally unsound strategy of delay through meritless appeals and motions before this Court in violation of rule 11 of the Mississippi Rules of Civil Procedure, all have caused the Plaintiffs to

incur fees and expenses. For that reason, Plaintiffs respectfully request that this Court find the Defendant has acted *ultra vires* and order the Defendant to personally pay all reasonable attorney's fees and expenses incurred in the undertaking of this action. Moreover, as it would be inequitable to allow the taxpayers of Hattiesburg to suffer for the Defendant's bad faith defense of this action, Plaintiffs request this Court order the Defendant to reimburse City of Hattiesburg for its legal fees and expenses incurred due to his contemptuous behavior.

### **III. Conclusion**


It is a mystery to these Plaintiffs why the Defendant stubbornly refuses to do that which he has sworn to do – uphold the law of the State of Mississippi: there is a statute that plainly sets out the mayor's duty to submit his appointees; there are two separate opinions from the Attorney General affirming that duty; and, if that weren't enough, there is a Supreme Court case and opinion directly on point, in which this very Defendant tried and failed to avoid his duty. The actions and inactions of the Defendant over the course of his current mayoral term cannot be defended in good faith. There is no longer a question of whether or not his behavior has conformed to the law. All that remains is to assess the proper reaction by the Court to the damages the Defendant has caused in requiring that a lawsuit be filed and defended on his behalf simply to force him to do what he knows he should. At the very least, it is appropriate under *Richardson*, Rule 11 of the Mississippi Rules of Civil Procedure, and other applicable Mississippi case law that the Defendant personally reimburse the City of Hattiesburg for his defense costs in this action and personally pay Plaintiffs' reasonable attorney's fees and costs.

**WHEREFORE, PREMISES CONSIDERED,** Plaintiffs, Carter Carrol and Kim Bradley, respectfully request that this Court grant Plaintiffs' Motion for Fees and Costs, and Plaintiffs further pray for any and all relief the Court may deem appropriate.

Respectfully submitted, this the 14<sup>th</sup> day of May, 2015.

**CARTER CARROLL and  
KIM BRADLEY**

By:

  
ROBERT D. GHOLSON  
Attorneys for Plaintiffs

**ROBERT D. GHOLSON - MSB# 4811**  
**KATHERINE B. SUMRALL - MSB# 104668**  
GHOLSON BURSON ENTREKIN & ORR, PA  
Post Office Box 1289  
Laurel, Mississippi 39441-1289  
Telephone: (601) 649-4440  
Facsimile: (601) 649-4441  
*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I, Robert D. Gholson, hereby certify that a copy of the above and foregoing document has been served on the following by directing same to their office/mailling addresses through first-class, United States mail, postage prepaid, on this the 14<sup>th</sup> day of May, 2015:

Charles Lawrence, Esq. (*also via email*)  
1105 Edwards Street  
Hattiesburg, MS 39401

Shawn O'Hara  
P.O. Box 15275  
Hattiesburg, MS 39404

Elisha Jackson  
P.O. Box 1542  
Hattiesburg, MS 39403

  
ROBERT D. GHOLSON