

FILED

JAN 05 2015

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

*Forrest County Clerk*  
FORREST COUNTY CIRCUIT CLERK

CARTER CARROLL and  
KIM BRADLEY

PLAINTIFFS

VS.

CAUSE NO. CI14-0212

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

DEFENDANT

**DEFENDANT'S RESPONSE TO  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Defendant, Johnny L. DuPree, by and through the undersigned attorney, and file this response to Plaintiff's Motion for Summary Judgment and in response thereto states and would show unto the Court the following to-wit:

Defendant has previously submitted six nominees for approval as department directors. Five of the six nominees were approved. The nominee for the City Clerk was not approved. In or about October 2014, Defendant notified the City Council at the conclusion of a council meeting that he had a new nominee for the position of City Clerk that he wished to present at a future meeting for their consideration and was informed by the Council President and Plaintiff, Kim Bradley, that a single nominee would not be considered and that all nominees for department directors should be submitted at the same time.

Defendant has now submitted the names of his nominees for the positions of Municipal Prosecutors, Public Defender, Municipal Court Judge, Municipal Court Clerk, Municipal Court Judges Pro Tem, City Attorney, Director of Urban Development, Director of Parks and Recreation, and Chief of Police for placement on the City Council's agenda for their consideration during their January 6, 2015 Council meeting. See Affidavit of Mayor Johnny L. DuPree, attached hereto and made a part hereof as Exhibit "A".

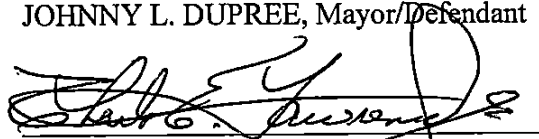
Defendant has not submitted a nominee for City Clerk for consideration by the Council during their January 6, 2015 meeting because the nominee that was mentioned and ready to be submitted in October requested that their name be withdrawn.

Plaintiff's motion for summary judgment and for an order of mandamus is now moot as no case or controversy continues to exist and a judgment on the merits would be of no practical benefit to the Plaintiffs. *See, Fails v. Jefferson Davis County Public School Board*, 95 So. 3d 1223, 1225 (Miss. 2012), cited in *Frisby v. City of Gulfport (In re Inclusion Into the City of Biloxi)*, 113 So.3d 565 (Miss. 2013) and *Beals v. State*, No. 2013-CP-00777-COA (Miss. App., 2014).

Respectfully submitted this the 31<sup>st</sup> day of December, A.D., 2014.

JOHNNY L. DUPREE, Mayor/Defendant

By:

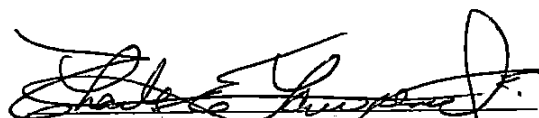
  
CHARLES E. LAWRENCE, JR.  
Attorney for Defendant

CERTIFICATE OF SERVICE

I, CHARLES E. LAWRENCE, JR., Attorney for Defendant do hereby certify that I have this day served a true and correct copy of the above and foregoing Response of Defendant to Plaintiff's Motion for Summary Judgment by U.S. Mail, postage prepaid, and facsimile to the following:

Robert D. Gholson, Esq.  
Katherine B. Sumrall, Esq.  
Post Office Box 1289  
Laurel, MS 39441-1289  
Facsimile (601) 649-4441

THIS the 31<sup>st</sup> Day of December, 2014.

  
CHARLES E. LAWRENCE, JR.

STATE OF MISSISSIPPI

COUNTY OF FORREST

AFFIDAVIT OF JOHNNY L. DUPREE

PERSONALLY appeared before me, the undersigned authority, in and for the jurisdiction aforesaid, the within named, JOHNNY L. DUPREE, Mayor of the City of Hattiesburg and Defendant in the Civil Action in Cause No. CI14-0212, In the Circuit Court of Forrest County, Mississippi who having being first duly sworn by me, states under oath the following:

1. My name is Johnny L. DuPree. I am over the age of 21 years and competent to testify as to the matter set forth in this affidavit. I have personal knowledge of the matters and facts contained herein.

2. I am the duly elected Mayor of the City of Hattiesburg.

3. That in or about October 2014 after the conclusion of a Council Meeting, I announced to the City Council that I had a nominee to be submitted for the position of City Clerk. I was informed by Council President, Kim Bradley, that a single nominee would not be considered and that nominees for all department directors should be submitted for consideration by the council at the same time.

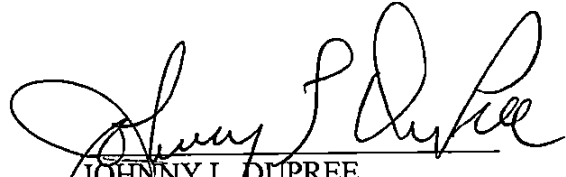
4. I have this day submitted the names of my nominees for department directors and the positions of Municipal Prosecutors, Public Defender, Municipal Court Judge, Municipal Court Clerk, Municipal Court Judges Pro Tem, City Attorney, Director of Urban Development, Director of Parks and Recreation, and Chief of Police for consideration by the City Council at their January 6, 2015 meeting.

Exhibit "A"

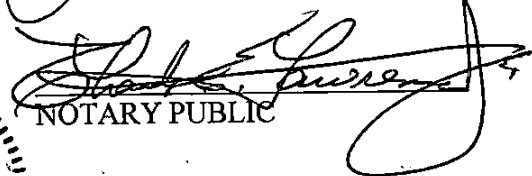
5. The single position for which a nominee has not been submitted is the position of City Clerk. No nominee has been submitted for this position because the person that had consented to serve in the position in October 2014 requested that their name be removed.

6. I will continue my search for a person to nominate for the position of City Clerk.

FURTHER, AFFIANT SAITH NOT.

  
JOHNNY L. DUPREE

SWORN TO AND SUBSCRIBED before me on this the 31<sup>st</sup> day of December,  
2014.

  
NOTARY PUBLIC

My Commission Expires:

10/10/2016





**Charles E. Lawrence, Jr.**

ATTORNEY AND COUNSELOR-AT-LAW

P.O. Box 1624 • 1105 EDWARDS STREET • HATTIESBURG, MS 39403-1624

TELEPHONE (601) 582-4157 • FAX (601) 582-4140

December 31, 2014

Mrs. Lou Ellen Adams  
Circuit Clerk  
P. O. Box 992  
Hattiesburg, MS 39403-0992

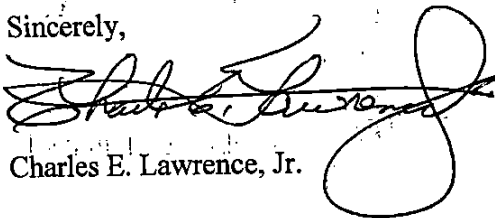
Re: Carroll, et al v. DuPree – Circuit Court of Forrest County  
Cause No. CI14-0212

Dear Mrs. Adams:

Enclosed is the Response to Motion for Summary Judgment that I am submitting to be filed on behalf of Mayor DuPree in the above reference matter.

Thanking you for your attention in this matter.

Sincerely,



Charles E. Lawrence, Jr.

Enclosure

Cc: Attorney Robert D. Gholson, w/enc.

Celjr