

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

FILED

JUN 23 2015

CARTER CARROLL and  
KIM BRADLEY

PLAINTIFFS  
FORREST COUNTY CIRCUIT CLERK

VS.

CAUSE NO. CI 14-0212

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

DEFENDANT

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MOTION TO JOIN INDESPENSABLE  
PARTIES, REMOVE FINDING OF  
CONTEMPT AND FOR PERMANENT INJUNCTION

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I.  
INTRODUCTION

COMES NOW the Defendant, Johnny L. Dupree, in his official capacity as Mayor of the City of Hattiesburg, by and through counsel, and files his Motion to Join Indispensable Parties, Remove Finding of Contempt, and Permanent Injunction, and in its support, states as follows:

II.  
PROCEDURAL POSTURE

A. FACTS PRIOR TO THE JUNE 4, 2015 HEARING

This matter originated pursuant to an action filed by the Plaintiffs, Messieurs Carter Carroll and Kim Bradley, two members of the City Council of Hattiesburg, Mississippi. The complaint alleged that the Defendant, the Honorable Johnny L. Dupree (the Mayor), was derelict in his duty in failing to timely submit to the City Council duly qualified persons for appointment to various offices and positions with the City of Hattiesburg (City). The Plaintiffs claimed they could not fulfill their duty of either confirming or denying such appointments through the exercise of their power of "advice and consent." The Plaintiffs sought the issuance of a writ of

Mandamus ordering the Mayor to timely submit duly qualified persons for certain unfilled positions with the City.

After a hearing on the Petition for Writ of Mandamus, the court essentially granted the relief sought by the Plaintiffs in an order dated January 16, 2015. In February, 2015, the court modified its order, stating in paragraph 1 that the Mayor was "ordered to submit the name of a duly qualified person for the Hattiesburg City Council within twenty-one (21) days of February 2, 2015." Paragraph 2 provided that the Mayor was to submit the names of duly qualified persons for the positions of Municipal Judge *pro tem*, city attorney, police chief, and municipal court public defender to the City Council within twenty-one (21) days of February 2, 2015. Paragraph 3 provided that if the persons submitted to the Council were not confirmed, the Mayor was required to submit additional names forthwith.

Despite submitting duly qualified persons for these positions, the Council has consistently refused to confirm the position of Chief of Police. In fact, since entry of the January 16, 2015 order, the Mayor had submitted three duly qualified persons for this office when he appeared before the court for a show cause hearing on June 4, 2015. Despite the Mayor's submission of these duly qualified nominees, and no reasons that would constitute good cause for the Council's failure to confirm these nominees being given, the court found the Mayor in contempt of court for essentially failing to submit persons the Council would confirm. The Court then ordered that the Mayor have someone confirmed for the position of Chief of Police by July 10, 2015. The Mayor's failure to do so would result in a fine of \$150.00 per day until such confirmation.

## **B. FACTS AFTER THE JUNE 4, 2015 HEARING**

In an effort to comply with the Court's order, on Tuesday, June 16, 2015, the Mayor brought Crystal Springs, Mississippi Police Chief Anthony Parker before the Council for confirmation as the City's Chief of Police. There was no motion made for his confirmation. Although they have consistently told and intimated to this court that they have been prevented from confirming duly qualified appointees because of the Mayor's actions, Councilman Bradley moved, with Councilman Carrol providing a second, to table action on this appointment to the end of the week. This Motion failed with these councilmen voting for the motion, Councilwoman Delgado and Councilman Nailor voting against, and Councilwoman Dryden abstaining.

After this failure to table this appointment, Councilman Nailor moved, with Councilwoman Dryden providing a second, to table the matter until July 7, 2015, the next regularly scheduled council meeting, three days before the Mayor is scheduled to appear before this court to provide the court with a status of his efforts to not only bring forth qualified candidates, but to apprise the court of whether or not they have been confirmed. This Motion passed on a four to one vote with Councilwoman Delgado providing the only nay vote.

Just as the Council did with Mitchell Dent, former Police Chief of the City of Vicksburg, Mississippi; Jimmie Gardner, former Police Chief of the City of Pritchard, Alabama; and Ronald Sampson, Sr., Deputy Sheriff with the Hinds County, Sheriff's Department, the Council refused to confirm Anthony Parker as the City's Police Chief. And once again, neither the Plaintiffs individually nor the Council as a whole provided any reason for its failure and refusal to confirm this highly qualified law enforcement officer. The reason for the Plaintiffs' and the Council's failure to provide such a reason is obvious. There is no reason they can offer that would

constitute good cause or any cause other than not wanting to confirm the Mayor's appointment. This attitude is consistent with their belief that they are not accountable to anyone or anything. Therefore, they have decided to arbitrarily and capriciously deny the Mayor's appointment until he submits to their will by appointing someone they want rather than the Mayor's choice.

### **III.** **BASIS FOR REQUESTED RELIEF**

#### **A. MOTION TO JOIN INDISPENSABLE PARTIES**

The Plaintiffs are members of the Council under a "city council" form of government. Under this form of government, the Council has the power of advice and consent with regard to Mayoral appointments. The Council's power in this area is limited, however, in that it can only withhold consent for good cause. See *Jordan v. Smith*, 669 So.2d 752, 757 (Miss. 1996) ("We approved only an ordinance duly adopted applying the confirmation power to the municipal officers here involved.... *Confirmation should not be withheld without good cause.*") (Emphasis added) As shown above, there was no good cause for the Council's failure to confirm the prior persons nominated for appointment for Chief of Police and especially with the latest appointment of Anthony Parker.

Therefore, because of the Council's actions of arbitrarily and capriciously denying confirmation no matter who the Mayor appoints, and the Court's rulings, the Mayor is in a position of having absolutely no control of whether his appointments are confirmed or not. In other words, it appears that it is impossible for the Mayor to protect his individual interests or the interests of his office as Mayor of the City of Hattiesburg without the joinder of these three Councilmembers as Plaintiffs in this action.

Thus, based on the above, the Court should join the Council members who are not parties to this action. It is clear that this Court has jurisdiction of the three Councilmembers who are

not presently Plaintiffs in this action. It also appears that complete relief cannot be accorded the Mayor without the joinder of these Councilmembers. Thus, pursuant to Rule 19 of the Mississippi Rules of Civil Procedure, the Court should order that they be joined as Plaintiffs to this action.

**B. MOTION TO REMOVE FINDING OF CONTEMPT AND COMPEL  
THE APPOINTMENT OF ANTHONY PARKER AS POLICE CHIEF**

Based on the above, the Mayor has complied with the mandate that he submit duly qualified persons for the office of Chief of Police. Therefore, the Mayor submits that the finding of Contempt should be rescinded or otherwise removed forthwith. This action is required because despite providing duly qualified persons for the position of Police Chief, the Plaintiffs and the Council, have decided that even though they want to have the Mayor held accountable for his actions, they have no accountability whatsoever. In fact, the Council's action in failing and refusing to confirm his appointments, and especially Anthony Parker, and then running to this court to sanction their actions, amount to a fraud upon this court. At a minimum, such actions constitute bad faith.

The Plaintiffs and Council as a whole have willfully and consciously engaged in an effort to thwart the Mayor's attempt to assemble his own team of city officers pursuant to the authority he is granted under the Constitution of the State of Mississippi and the statutes of this state. Rather, they have attempted, and continue to attempt, to usurp power and authority reserved for the Mayor. Therefore, the Plaintiffs and/or the Council should be ordered to appear before this court and show cause as to why it failed to confirm Anthony Parker as the City's Police Chief. Upon their failure to do so, the Court should enter a permanent injunction which confirms Anthony Parker to this office.

WHEREFORE, PREMISES CONSIDERED Defendant Johnny L. Dupree, Mayor of the City of Hattiesburg, this Honorable court will issue its order, ordering as follows:

1. That a hearing be held on this matter within five (5) days of the filing of this Motion, and that Councilwomen Deborah Delgado and Mary Dryden, and Councilman Henry Naylor be ordered to appear at said hearing;
2. That Councilwomen Deborah Delgado and Mary Dryden, and Councilman Henry Naylor be joined to this action;
3. That the finding of contempt against the Mayor is rescinded as he has complied with the court's mandate to present duly qualified persons to the Council for confirmation as Chief of Police;
4. That Plaintiff's motion for an injunction is granted and Anthony Parker is confirmed as Chief of Police;
5. That the Plaintiffs are required to pay the Mayor's attorneys' fees associated with the filing and prosecution of this motion; and
6. Such other, further and different relief as the court deems just and appropriate under the circumstances.

RESPECTFULLY SUBMITTED, this 23rd day of June, 2015

JOHNNY L. DUPREE, Defendant

BY: 

OTTOWA E. CARTER, JR., MSB#8925

CATOCHE J. L. BODY, MSB#99526

His Attorneys

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**CERTIFICATE OF SERVICE**

I, OTTOWA E. CARTER, JR., Attorney for Defendant, Johnny L. DuPree, do hereby certify that I have this day filed this Certificate of Compliance with the Clerk of this Court and have served a copy of the same by mailing a true and correct copy to:

Honorable Robert D. Gholson

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SO certified, this 23<sup>rd</sup> day of June, 2015.

  
Ottawa E. Carter, Jr.