

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

CARTER CARROLL and
KIM BRADLEY

FILED

PLAINTIFFS

VS.

JAN 22 2015

CAUSE NO. CI 14-0212

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

Sp. Ed. Adams
FORREST COUNTY CIRCUIT CLERK

DEFENDANT

PLAINTIFFS' MOTION FOR MODIFICATION OF ORDER

COME NOW Plaintiffs, Carter Carroll and Kim Bradley, pursuant to Rule 59 of the Mississippi Rules of Civil Procedure and file their Motion for Modification of Order, and for cause thereof, would show unto the Court the following:

1. In its Order filed on January 16, 2015, this Court flatly rejected Defendant's claims of mootness, and specifically directed Defendant to "appoint and submit to the Hattiesburg City Council for confirmation, the names of legally qualified directors for all city departments which, as of this date, have not been confirmed by the Hattiesburg City Council."
2. Now, just a matter of days after the Order was issued, Defendant has taken the position that he has met all of the conditions of the Order- despite having done nothing whatsoever in the interim. In a comment to a local newspaper, the Hattiesburg American, published January 16, 2015, Mayor Dupree is quoted explaining his position that he has met the requirements of the Order, stating, "It says that I must as mayor, I must do my job, and bring them (the nominees) forward, which I have done. And it goes on to say that the council needs to do their job. That's the way I read it. They need to confirm them." See Hattiesburg American article attached hereto as Exhibit "A."
3. This express declaration of mootness flies in the face of this Court's mandamus and demonstrates Defendant's disregard for the solemn processes and authority of this Court. It is

plain from the Defendant's comments that he believes he is not required to make any further nominations and that the impetus is on the council to take action. Plaintiffs, therefore, are regrettably forced to ask the Court to modify its prior Order to ensure compliance of said Order by the Defendant.

4. Plaintiffs request that this Court modify its original Order to specifically require that the Defendant accomplish the following:


- a. Within thirty (30) days of the date of filing of this Order, Mayor Johnny Dupree shall submit for nomination the holdover employees for those positions which no new appointment has been made. Those positions include municipal judge *pro tem*, city attorney, police chief, and public defender.
- b. Within thirty (30) days of the date of filing of this Order, Mayor Johnny Dupree shall submit for nomination a previously un-nominated and legally qualified candidate as a nominee for the vacant position of city clerk.
- c. Until such time as the positions of city clerk, municipal judge *pro tem*, city attorney, police chief, and public defender have been filled by nominees which have been approved for appointment by a majority vote of the Hattiesburg City Council, Mayor Johnny Dupree shall submit previously un-nominated and legally qualified nominees to the city council for those five previously stated positions.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request this Court modify its Order filed on January 16, 2015, to direct the Defendant to comply with the specific requirements stated above. Plaintiffs also respectfully request any such other and further relief as to which they may be entitled.

Respectfully submitted, this the **22nd** day of **January, 2015**.

CARTER CARROLL and
KIM BRADLEY

By:


ROBERT D. GHOLSON
Attorney for Plaintiffs

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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 addresses through first-class, United States mail, postage prepaid, on this the **22nd** day of **January, 2015**:

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ROBERT D. GHOLSON

Hub City mayor ordered to submit directors for approval

Tim Doherty, American Staff Writer 10:19 p.m. CST January 16, 2015



(Photo: American file photo)

Hattiesburg Mayor Johnny DuPree was ordered by a specially-appointed circuit court judge to bring forward directors for any city department that has not been confirmed by City Council.

How long the mayor has to do so is not spelled out in a one-page order signed Tuesday by Special Judge L. Breland Hilburn and filed Friday in Forrest County Circuit Court.

Hilburn ordered DuPree "in his official capacity as Mayor of the City of Hattiesburg ... to appoint and submit to the Hattiesburg City Council for confirmation, the names of legally qualified directors for all city departments which, as of this date, have not been confirmed by the Hattiesburg City Council."

DuPree said he had met the requirements of the order.

"It says that I must as mayor, I must do my job, and bring them forward, which I have done," he said. "And it goes on to say that the council needs to do their job. That's the way I read it. They need to confirm them."

"It's already been done, but I will continue to perform the duties of the mayor."

Five positions have yet to be confirmed by the council — police chief, city attorney, public defender, judge pro-tem and city clerk — and the first four positions are being held by administrators who DuPree had not brought forward since being sworn to a fourth term in September 2013.

The order did not specify whether those four holdovers — Police Chief Frazier Bolton, City Attorney Charles Lawrence Jr., Public Defender Alethea Shaw Milton and Judge Pro-tem Carol Jones Russell — had to be put up for approval immediately or whether they would serve until replacements were found and confirmed.

DuPree said the situation was the same as last winter, when he had nominated two new appointees to the Convention Center Commission. The council, wishing to see the holdovers continue in their duties, did not approve DuPree's nominees.

"And they continue to serve in those positions, and will continue to do so until I bring two more people forward and the council approves them," DuPree said. "This is no different. It's the same thing."

Breland's order resulted from a civil complaint brought against the mayor in November by City Councilmen Kim Bradley and Carter Carroll. The complaint, which was amended in December, asked the court to require DuPree to bring forward 12 of 17 nominees requiring council approval.

On Dec. 31, DuPree submitted 11 for approval. Council approved seven on Jan. 5.

But four first-time candidates were not even considered for a vote by council, and it turned out that one of them, Judge Pro-tem nominee Crystal Wise Martin, did not meet residence eligibility requirements.

Lawrence, DuPree's defense attorney, had argued that since the 2013 special election, the mayor had brought forward candidates for all 17 positions, with council rejecting five candidates. Lawrence had asked Hilburn to deem the complaint moot and dismiss the suit.

But Robert Gholson, who represented the councilmen, said Hilburn clearly didn't agree with that interpretation.

"The mayor said, 'Well, I've already done what statute requires me to do, I've already put people up, and, judge, don't make me do it anymore,'" Gholson said. "Well, the judge rejected that argument completely, and you have to believe that's because what the mayor has done so far is insufficient."

"The thrust of this is, and if you look at (past) attorney general opinions as well, this is not supposed to be a game. You're supposed to be doing this in good faith and what's in the best interests of the city and not to try and accomplish some sort of plan or scheme that you have personally."

DuPree and the council had butted heads previously over his nominees and timeliness of their submission for approval.

In 2006, DuPree was sued over nominees, and after an 18-month legal battle that wound up in the Mississippi Supreme Court, was ordered to bring them forward.

"What I'm hopeful of is that (DuPree will) look at this, be mindful of what the Supreme Court has already said, and say, 'OK, I'm either going to put my holdovers up right away or I'm going to put other, qualified people up right away, such that we can get them up and confirmed by the council.'"

If that doesn't happen, Gholson said the councilmen would have no other action than to take the mayor back to court.

"My clients do not want to do that," Gholson said. "They want this to be over with, and they want to move forward."

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EXHIBIT

A

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January 22, 2015

Via Hand-Delivery
Honorable Lou Ellen Adams
Forrest County Circuit Clerk
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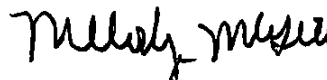
**Re: *Carroll & Bradley v. Dupree*
*Cause No. CI14-0212***

Dear Ms. Adams:

Enclosed herein for filing in the above referenced matter is the Plaintiffs' Motion for Modification of Order, along with an extra copy to be stamped "filed."

If you have any questions, please feel free to give me a call.

Sincerely yours,



Melody McGill
Paralegal

/mm

Enclosures

cc: Charles Lawrence, Esq.
Shawn O'Hara
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