

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

CARTER CARROLL and  
KIM BRADLEY

**FILED**

PLAINTIFFS

MAY 21 2015

VS.

CAUSE NO. CI14-0212

JOHNNY L. DUPREE, *in his official*

*Forrest County Clerk*  
FORREST COUNTY CIRCUIT CLERK

*Capacity as Mayor of the City of Hattiesburg*

DEFENDANT

**MOTION TO RECONSIDER AND SET ASIDE ORDER OR  
IN THE ALTERNATIVE TO GRANT A NEW TRIAL**

COMES NOW Defendant, Mayor Johnny L. DuPree, by and through the undersigned attorney and file this Motion to Reconsider or in the Alternative to Grant a New Trial pursuant to Rule 59 of the Mississippi Rules of Civil Procedure and in support thereof would show unto the court the following to-wit:

1.

On or about May 11, 2015, this court entered an Order on Plaintiffs' Motion for Status Conference wherein the Defendant was found in civil contempt of the Order of Mandamus previously issued by the court for the Defendant to submit nominees to the Hattiesburg City Council for consideration of approval to fill director level positions. On the date of the status conference there remained one directorship level position that was vacant.

2.

The Defendant was found in civil contempt at the conclusion of the status conference despite the fact that no evidentiary hearing was conducted. No witnesses were called to testify and no evidence was introduced before the court. The finding of civil contempt is not supported by any evidence.

3.

The finding of the Defendant to be in civil contempt without an evidentiary hearing violated the Defendant's right to due process as guaranteed to him by the Constitution of the State of Mississippi and the United States Constitution and further denied the Defendant equal protection under the law.

4.

The Supreme Court of the State of Mississippi has determined that the standard to find a person to be in civil contempt requires that there be clear and convincing evidence and for a criminal contempt to be proven it must be proven beyond a reasonable doubt.

5.

The Defendant has not engaged in conduct that is willful, continuous or contemptuous in nature and has in good faith made every effort to abide by and fulfill his obligation as set forth in the order of mandamus.

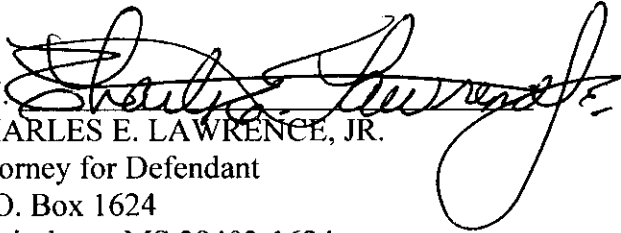
6.

For the reasons set forth above and for such other good and valid reasons as may be shown at a hearing on this motion the Order entered by this court on May 11, 2015 and filed of record on May 13, 2015 should be reconsidered and set aside and a new trial granted to the Defendant or in the alternative altered and amended to make a finding of no civil contempt or that the judgment be open for the purpose of taking testimony, amending the findings of facts and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

WHEREFORE, PREMISES CONSIDERED the Defendant moves and pray that upon a hearing on this motion that this court will set aside the order of contempt and grant a new trial or amend its judgment to find that the Defendant has not committed a civil contempt or to grant such relief as the court may deem appropriate under Rule 59 of the Mississippi Rules of Civil Procedure.

Respectfully submitted,

JOHNNY L. DUPREE, Defendant

BY:   
CHARLES E. LAWRENCE, JR.  
Attorney for Defendant  
P. O. Box 1624  
Hattiesburg, MS 39403-1624  
(601) 582-4157  
MB #1105

**CERTIFICATE OF SERVICE**

I, CHARLES E. LAWRENCE, JR., Attorney for Defendant, Johnny L. DuPree, do hereby certify that I have this day mailed by U.S. mail, postage prepaid, a true and correct copy of the above and foregoing Motion to:

Honorable Robert D. Gholson  
Attorney at Law  
Post Office Box 1289  
Laurel, MS 39441-1289

(served via email Gholson@gbeolaw.com)  
(served via facsimile (601) 649-4441)

Honorable Katherine B. Sumrall  
Attorney at Law  
Post Office Box 1289  
Laurel, MS 39441-1289

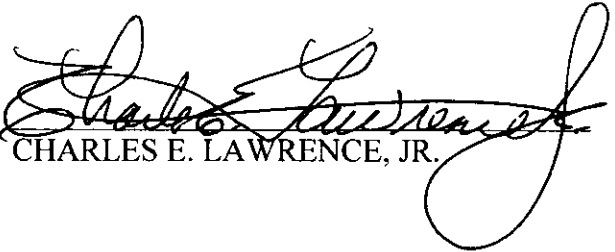
(served via facsimile (601) 649-4441)

Shawn O'Hara

P. O. Box 15275  
Hattiesburg, MS 39404

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

THIS the 21<sup>st</sup> day of May 2015.



CHARLES E. LAWRENCE, JR.