

FILED

JUL 06 2015

Forrest County
FORREST COUNTY CIRCUIT CLERK

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

**CARTER CARROLL and
KIM BRADLEY**

PLAINTIFFS

VS.

CAUSE NO. CI 14-0212

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

DEFENDANT

**PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO JOIN INDISPENSABLE
PARTIES, REMOVE FINDING OF CONTEMPT AND
FOR PERMANENT INJUNCTION**

Come now the Plaintiffs, Kim Bradley and Carter Carroll, and respond to Defendant's Motion to Join Indispensable Parties, Remove Finding of Contempt, and for Permanent Injunction. For cause thereof, Plaintiffs would show as follows:

1. On June 4, 2015, upon hearing the testimony and arguments of both parties at the show cause hearing for civil contempt, this Court found that the Defendant was, in fact, in civil contempt of court and ordered that, beginning July 10, 2015, the Defendant be assessed a fine of \$150.00 per day until such time as the Defendant rids himself of his contemptuous conduct.
2. On June 23, 2015, Defendant filed his motion, seeking to join, as indispensable parties, the Hattiesburg City Council members who are not parties to this action. Defendant's motion further requested that this court remove its finding of civil contempt against him, and compel the appointment of Anthony Parker as Hattiesburg Police Chief. The basis for each request made by Defendant in his motion is that the council arbitrarily and capriciously denied the Defendant's nomination of Mr. Parker for Chief of Police. This claim, among others in Defendant's Motion, is simply not true.

3. At a specially called meeting on June 29, 2015, the Hattiesburg City Council voted unanimously, with a 4-0 vote, to approve the Defendant's nomination of Anthony Parker as Chief of Police. Absent at this meeting were the Defendant and Councilwoman Deborah Delgado.

4. Defendant's Motion has clearly been rendered moot by the actions of the Hattiesburg City Council in voting to approve the Defendant's nominee for the remaining position of chief of police. Because the nominee of the Mayor has been approved, there is no need to join other parties to force the council to act, as alleged by the Plaintiff. Moreover, there is obviously no intervention needed by this Court to compel the appointment of Anthony Parker as Hattiesburg Police Chief. *Fratesi v. City of Indianola*, 972 So. 2d 38, 42 (Miss. Ct. App. 2008) ("Fratesi was not entitled to injunctive relief. As to his request that the City be restrained from further construction, the trial court correctly determined that the issue was moot as the City had already ceased work on the project.").

5. Despite the fact that the final remaining city position has now at long last been filled, the contemptuous activity of the Defendant throughout the pendency of this litigation and his failure to comply with the orders of this Court still warrant that the Defendant, in his individual capacity, be required to pay Plaintiffs' attorney's fees and costs.

6. It is plain that the Defendant has acted *ultra vires* in the nearly two (2) years since his re-election. Before the Council's approval of nominee Anthony Parker and since his reelection in 2013, Defendant had 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. Of his nominations, the Council had duly approved sixteen (16) – leaving only the position of Chief of Police still vacant. It was not until after this Court found the Defendant in civil contempt following his show cause hearing on June

4, 2015, and with the impending threat of a fine of \$150.00 per day that the Defendant finally presented Mr. Parker, an unquestionably qualified candidate, as nominee for the remaining position of Chief of Police.

7. To put this contumacious conduct into context, the Defendant was re-elected to his Mayoral office on July 1, 2013. But it was not until June 29, 2015, almost two (2) years to the day later, that the Defendant finally relented and gained approval for qualified personnel in the 17 vacant city positions. This unconscionable delay is essentially admitted by Defendant in his motion: "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." What is missing from Defendant's motion is any reasonable explanation for the multiple delays in presenting qualified candidates to the Council for approval, in the face of this Court's orders compelling him to do so. Accordingly, when the Defendant refused to submit competent nominees and continually ignored and delayed the process of this Court, he purposefully forfeited any protection his position of mayor might have afforded him, and, therefore, he proceeded in his individual capacity. See *Richardson v. Canton Farm Equipment, Inc.*, 608 So.2d 1240, 1257 (Miss. 1992); see also, *Smith v. Dorsey*, 599 So.2d 529 (Miss. 1992); *Pearl River Water Valley Supply District v. Hinds County*, 445 So.2d 1330 (Miss. 1984). 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.

8. Because his contemptuous actions were wholly outside of the course and scope of his office as Mayor, 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

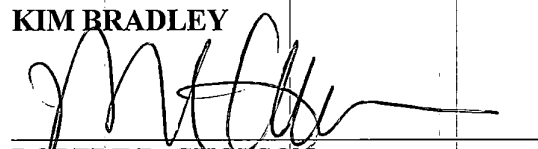
incurred in the undertaking of this action by the Plaintiffs. Moreover, as it would be inequitable to allow the taxpayers of Hattiesburg to suffer for the Defendant's bad faith defense of this action, Plaintiffs request this Court order the Defendant to reimburse the City of Hattiesburg for its legal fees and expenses incurred due to his contemptuous behavior pursuant to Miss. Code Ann. §31-7-57(1).

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request this Court deny Defendant's Motion to Join Indispensable Parties, Remove Finding of Contempt, and for Permanent Injunction, and for such other and further relief as to which they may be entitled.

Respectfully submitted, this the 2nd day of July, 2015.

**CARTER CARROLL and
KIM BRADLEY**

By:


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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/mailing addresses through first-class, United States mail, postage prepaid, on this the 2nd day of **July, 2015**:

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July 2, 2015

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**Re: *Carroll & Bradley v. Dupree*
*Cause No. CI14-0212***

Dear Ms. Adams:

Enclosed for filing in the above referenced matter is the Plaintiffs' Response to Defendant's Motion to Join Indispensable Parties, Remove Finding of Contempt and for Permanent Injunction, along with an extra copy to be stamped "filed" and returned in the enclosed self-addressed, stamped envelope.

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

Sincerely yours,

Melodye McGill

Melodye McGill
Paralegal

Enclosures

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