

IN THE SUPREME COURT OF MISSISSIPPI

DAVID JORDAN, RONNIE STEVENSON,  
CHARLES E. MCCOY, SR., TENNILL  
CANNON AND CARL PALMER

APPELLANTS

VS.

NO. 2010-CA-01333

CAROLYN MCADAMS

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following persons have an interest in the outcome of this case. These representations are made in order that the assigned Judges of this Court may evaluate possible disqualification or recusal:

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APPELLANTS' REQUEST FOR SANCTIONS WAS UNTIMELY

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THE FIVE COUNCIL MEMBER DEFENDANT/APPELLANTS CLEARLY TOOK THE POSITION THAT JAMES LITTLETON HAD A RIGHT *PERSONAL TO HIM* TO HOLD OVER AND THE MAYOR HAD NO LAWFUL RIGHT TO TERMINATE HIM

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**WHY DECLARATORY JUDGMENT WAS APPROPRIATE IN THIS CASE**

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**A CITY CAN BE LIABLE WITHOUT HAVING IT IN ITS MINUTES**

## **ISSUE ELEVEN**

**THE PARAMETERS OF AND BURDEN OF PROOF FOR RULE 11 & THE LITIGATION ACCOUNTABILITY ACT**

## **ISSUE TWELVE**

**THE FACT THAT THE TRIAL JUDGE MADE NO FINDINGS OF FACT OR CONCLUSIONS OF LAW FURNISHES NO BASIS TO OVERRULE THE CHANCELLOR. THIS COURT ASSUMES THAT THE TRIAL JUDGE MADE DETERMINATIONS OF FACT SUFFICIENT TO SUPPORT HIS RULING**

## **ISSUE THIRTEEN**

**WILLIE PERKINS' ENTIRE ARGUMENT IS GROUNDED ON THE PROPOSITION THAT THE INTENT IN FILING THIS LAWSUIT WAS FORCING THE DEFENDANTS TO COMPROMISE WITH THE MAYOR ON A CHOICE FOR CITY ATTORNEY. MR. PERKINS HAS TWISTED AND CONTORTED THE ARGUMENT OF COUNSEL TO SUIT HIS OWN NEEDS RATHER THAN GIVING IT A FAIR READING. THE MAYOR'S COUNSEL ARGUED THAT UNDER THE REPUBLICAN FORM OF GOVERNMENT ON WHICH GREENWOOD'S GOVERNMENT IS BASED, POWER IS DIFFUSED BETWEEN THE THREE BRANCHES OF GOVERNMENT IN ORDER TO COMPEL THE LEGISLATIVE TO COMPROMISE RATHER THAN DICTATE TO THE EXECUTIVE; AND, THAT IF THIS TRIAL COURT WERE TO SUPPORT AN INDEPENDENT RIGHT IN JAMES LITTLETON TO HOLD OVER, IT WOULD HAVE UPSET THIS DELICATE BALANCE OF POWER**

## **ISSUE FOURTEEN**

**THIS LAWSUIT WAS NOT RACIALLY MOTIVATED AS MR. PERKINS ALLEGES. IF GREENWOOD IS EVER TO HAVE ANY HOPE OF MOVING FORWARD, IT IS GOING TO HAVE TO LEARN HOW TO HONOR THOSE WHO SELFLESSLY AND COURAGEOUSLY SECURED THE RIGHT OF AFRICAN-AMERICANS TO VOTE WHILE AT THE SAME TIME LEAVING THE PAST IN THE PAST AND LIVING IN THE PRESENT**

## **STANDARD OF REVIEW**

The standard of review for both Rule 11 and the Litigation Accountability Act is “abuse of discretion.” *Cain d/b/a Quest Rehab v. Cain and Lakeview Nursing Center*, 967 So2d 654, 667, 2007 Miss. App. LEXIS 445 (Miss. App. 2007). Applying this standard, “The decision will be affirmed ‘unless there is a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon weighing of relevant factors.’” *Irby v. Estate of Irby*, 7 So3d 223, 228, 2009 Miss. LEXIS 146 (Miss. 2009).

## **STATEMENT OF THE CASE**

### **A. Course of Proceedings Below**

On July 20, 2009, the Plaintiff, the Mayor of Greenwood, Carolyn McAdams, filed her Verified Complaint asking the Chancery Court of Leflore County to issue a declaratory judgment declaring that James Littleton, after being fired by the Mayor, had no right to hold over as the Greenwood City Attorney; and, for an injunction to prohibit Mr. Littleton from continuing to purport to act as the Greenwood City Attorney. The Mayor sought declaratory relief against both James Littleton and five City Council members who supported his purported right to hold over even after being fired by the Mayor. Injunctive relief was sought against Littleton only.

On July 24, 2009, the two Chancellors in the Seventh Chancery Court District both recused themselves from hearing the case.

On August 3, 2009, the City Council defendants filed their answer and affirmative defenses.

On August 6, 2009, an Order was entered in which Special Chancellor Billy Bridges recused himself from hearing the case.

On August 7, 2009, an Order was entered appointing Joseph C. Webster as Special Chancellor to hear the case.

On August 14, 2009, James Littleton filed his answer and affirmative defenses.

On August 17, 2009, Special Judge Webster held a hearing in open court on Plaintiff's complaint.

Special Chancellor Webster rendered and entered his decision on August 26, 2009, granting Mayor McAdams' requested injunctive and declaratory relief against James Littleton, enjoining him from holding himself out and/or purporting to act as the Greenwood City Attorney.

In his decision he also dismissed the declaratory judgment action against the Council Members and reserved for subsequent hearing any award to them as to costs, expenses and attorneys fees.

The attorney for the Council Members filed his Motion For Sanctions, Fees and Costs on December 9, 2009.

On July 15, 2010, the court entered the Judge's order denying sanctions.

On August 10, 2010, Appellants filed their Notice of Appeal.

B. Statement of the Facts

James K. Littleton's employment as city attorney was terminated by Greenwood's newly elected mayor, Carolyn McAdams. Littleton announced to the Greenwood City Council that he was statutorily authorized to continue to serve as a hold over appointee until the mayor nominated – and the council approved – a replacement. The five council member Appellants in this case agreed with Littleton that he, himself, had a *personal* right under *Miss. Code Ann. §25-1-7* to hold over until his successor had been appointed by the Mayor and confirmed by the council and the Mayor had no lawful authority to fire him.

SUMMARY OF APPELLEE'S ARGUMENT

Motions for sanctions are treated as Rule 59(e) motions to alter or amend a judgment. This motion not having been filed until 3½ months after judgment, the court had no jurisdiction to consider it. It should have been dismissed on that basis alone.

They five council members were sued because they supported an independent right *personal* to James Littleton, allegedly found in *Miss. Code Ann. §25-1-7*, to hold over as City Attorney notwithstanding the fact that the Mayor had fired him. They make their position clear in both their trial court pleadings as well as the argument of their counsel before the trial court. The two Council members who were not sued supported the Mayor's position on the issue. They

agreed that Littleton had no right to hold over and the Mayor had a right to fire him.

This Court in its May 28, 2011, (9 to 0) decision in *Littleton v. McAdams*, Case No. 2009-CA-01197, clearly said that the five Council Members sued in this case were *absolutely and unequivocally wrong* about James Littleton's supposed right to hold over regardless of the Mayor's termination letter and that the two Council Members not sued were clearly right

Declaratory judgments are provided for by *Miss. R. Civ. P. 57(b)*. Their purpose is to clarify and settle the parties' legal relations and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.

Mayor McAdams met the two criteria are necessary to make the circumstances appropriate for a declaratory judgment: (1) the Plaintiff have standing as an interested party; and, (2) one or more of the vital issues giving rise to the proceeding is shown to be susceptible of authoritative resolution. If these two elements are present, then the trial court generally ought to grant the declaratory judgment.

Declaratory judgements are regularly used to resolve disputes concerning the appointment or discharge of public officers as well as other disputes between mayors and councils.

The prerequisite for declaratory relief is not to demonstrate a full blown dispute but merely to show the "ripening seeds of a controversy." It is clear beyond argument that Mayor McAdams has shown sufficient grounds for having filed a complaint for declaratory judgment against members of Council on the first three issues. This Court has already ruled in *Littleton v. McAdams* that Mayor McAdams lawfully terminated James Littleton on July 6<sup>th</sup>, that Littleton ceased to have any authority to act as city attorney when she terminated him, and after his termination the office was vacant. It is likewise clear from the five Council member's pleadings and counsel's arguments before the trial court, they, just as Littleton, opposed the Mayor on all

three of these issues.

This leaves declaratory judgment grounds 4, 5 and 6: (4) that they had no right to appoint James Littleton City Attorney in the absence of the Mayor's appointment; (5) they had no right to appoint James Littleton to represent the Council only; and, (6) they had no right to hire James Littleton as a Clerk to the Council to render legal advice.

The issue to be decided is not whether there was a fully ripened cause of action against the Council on these issues but rather were there present "the ripening seeds of a controversy" sufficient to justify a declaratory judgment action as to these three issues?

The basis in law for propositions One through three is this Court's April 28, 2011, decision in *Littleton v. McAdams*, \_\_\_ So3d \_\_\_, 2011 Miss. LEXIS 226 (2011). The basis in law for propositions four and five was this Court's decision in *Jordan v. Smith*, 669 So2d 752 (1996) where this Court held that only the Mayor of Greenwood had the right to choose the City Attorney by nominating his choice; and, where it also held that the Greenwood City Council's attempt to hire Willie Perkins as the Greenwood City Attorney without a Mayoral appointment, was unlawful.

The basis in law for proposition six is likewise clearly established. As the Attorney General has opined, "[T]here is no authority for a city council to hire an attorney to provide advice to the council under the guise of appointing a deputy council clerk." *Op. Atty. Gen. No. 2006-00060, Crisler, Mar. 31, 2006.*

The basis in fact for the declaratory judgment action against the five Council members is three-fold:

1. The five defendant/appellant council members clearly disagreed with declaratory judgment grounds 1, 2 and 3 and with the Chancellor's decision by steadfastly contending that



regardless of what the mayor might have wanted, James Littleton had a *personal* right to hold over in the office of city attorney and to function as the City Attorney; and, that this right *personal* to James Littleton was, by virtue of Miss. Code Ann. §25-1-7, “automatic” and mandatory and the Mayor, therefore, had no lawful right to fire James Littleton.

This is, of course, the exact opposite of what Mayor McAdams argued in front of the Chancery Court, the exact opposite of what the Chancery Court held; and the exact opposite of what this court held in *Littleton v. McAdams*, \_\_\_ So3d \_\_\_, 2011 Miss. LEXIS 226 (2011), where this Court held James Littleton, had no right to hold over after he had been fired by Mayor McAdams. Thus, there was a very sharply focused disagreement between Mayor McAdams and the five sued Council members as to declaratory judgment grounds 1, 2 and 3.

2. The Greenwood City Council in 1991 tried unsuccessfully to circumvent the Mayor’s appointment authority by passing a Council resolution in an attempt to hire Willie Perkins as the Greenwood City Attorney. This furnished a factual basis for declaratory judgment grounds 4, 5, and 6.

3. The Mayor and Council were not writing on a *Tabula Rasa*.<sup>1</sup> Further factual support for the mayor seeking the declaratory relief which she sought is the long and stormy history between the Greenwood Mayor’s Office and the Greenwood City Council over the issue of appointing and confirming a City Attorney. The Greenwood Mayor and City Council have been battling since 1991 over the issue of who has what rights in the appointment and confirmation of a City Attorney, including hearings before three courts (Chancery Court of Leflore County, U.S. District Court For The Northern District of Mississippi, and, The

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<sup>1</sup> A “clean slate.”

Mississippi Supreme Court); six written court opinions (two by the Chancery Court, one by the U.S. District Court, and three separate opinions by the Mississippi Supreme Court); and, had sought and obtained six Attorney General Opinions, regarding various aspects of the appointment, confirmation, or hold over of the Greenwood City Attorney. This furnishes factual support for declaratory judgment grounds 1-6.

Appellants' primary argument is that the five city council defendants could not possibly be subject to being sued for a declaratory judgment because it had nothing in its minutes about James Littleton holding over as City Attorney after Mayor McAdams had fired him. "The Greenwood City Council speaks and speaks only through its minutes. McAdams is unable to produce any minutes to support her contention of official action of appellants implied taken by their silence." (Appellants' Brief at 10)

As shown in the statements from the council members' pleadings and from the argument made before the trial court by their counsel, they supported James Littleton's hold over as City Attorney. They allowed his presence at their meetings and allowed him to continue to sit with the Council at Council's table and continue to advise the Council.

What counsel is referring to ("a city can act only through its minutes") is a contract rule. The purpose of the rule is to prevent a single member of the city council from obligating city funds by entering into a contract without a vote of the full council which is confirmed in writing by being recorded in the council's minutes. This rule has no application where a tort has been committed or a statute violated.

In order for the five council members to have, wrongfully and in violation of the law, acted beyond their authority in supporting the purported right of James Littleton to hold over, it was not necessary for the Council to take a vote and record in their minutes they were going to

break the law and act in concert with James Littleton's unlawful attempt to hold over after being fired.

Under M. R. Civ. P. 11(b) if a party files a pleading "which, in the opinion of the court, is frivolous," the court may order the party, or her attorneys, or both, to pay the opposing party "the reasonable expenses incurred by such other parties...including attorneys' fees." An objective standard is employed in determining whether sanctions should be imposed. Under the Litigation Accountability Act of 1988 if a party brings an action "without substantial justification," upon the motion of any party or *sua sponte*, the court shall award in addition to any other costs assessed, "reasonable attorney's fees and costs." Miss. Code Ann. §11-55-5.

A pleading is frivolous "only when, objectively speaking, the pleader...has no hope of success. "Though a case may be weak or 'light-headed,' that is not sufficient to label it frivolous." Neither being "wrong" or "untimely" is necessarily frivolous. The Chancellor denied sanctions in this case for two reasons. He said, "First, the Court finds that the joinder of the named Defendant City Council Members may have been ill advised, but such joinder certainly does not rise to the level of frivolous, nor does the Court find that it was filed for the purpose of harassment or delay." (Rec. 290). The second reason the Chancellor found sanctions to be unwarranted was that Counsel for the Mayor had twice before the hearing offered to dismiss the City Council Defendants and they objected to being dismissed. As the Chancellor said, "How can a party object to being dismissed from a lawsuit and then seek reimbursement to (sic.) their expenses? This Court will not allow that." (Rec. 290)

What the Council members complain about is that the Chancellor did not set out any findings of fact or conclusions of law in his opinion denying sanctions. The short answer to this argument is that the Council Members could have, but failed to, ask the court under Miss. R.Civ.

P. 52(a) to enter findings of fact and conclusions of law. Moreover, when the trial court omits findings of fact, this Court will assume that the judge made determinations of fact sufficient to support its ruling where no specific finding has been made.

Willie Perkins entire argument is grounded on the proposition that the intent in filing this lawsuit was forcing the defendants to compromise with the Mayor on a choice for City Attorney. Mr. Perkins has twisted and contorted the argument of the Mayor's counsel to suit his own needs rather than giving it a fair reading. The Mayor's counsel argued that under the Republican form of government on which Greenwood's government is based, power is diffused between the three branches of government in order to compel the legislative to compromise rather than dictate to the executive; and, that if the trial court in this case were to support an independent right in James Littleton to hold over, it would have upset this delicate balance.

This lawsuit was not racially motivated as Mr. Perkins alleges. If Greenwood is ever to have any hope of moving forward, it is going to have to learn how to honor those who selflessly and courageously secured the right of African-Americans to vote while at the same time leaving the past in the past and living in the present.

Carolyn McAdams and her counsel contend that she has proven her legitimate right to a declaratory judgment against the Council Members declaring that James Littleton was properly terminated and could not serve as City Attorney after his termination. The defendant Council members through their pleadings and the arguments of their attorney before the trial court made it clear that they opposed Mayor McAdams on this issue and supported the purported right of James Littleton to continue to sit as City Attorney regardless of his termination by the mayor.

As to the remaining three elements of the declaratory relief sought, i.e. – the Council could not make Littleton City Attorney without a mayoral nomination; could not hire him to

represent the council only; and, could not hire him as a deputy clerk to advise the Council, Mayor McAdams and her attorneys contend that in light of the long and stormy history between the parties on this issue which included appearances before three courts resulting in six judicial opinions and six Attorney General's opinions, she has shown, at a minimum, "the ripening seeds of controversy" sufficient to warrant the filing of a declaratory judgment action to delineate the rights of the Mayor and Council regarding the issues of appointment, discharge and hold-over of City Attorneys.

The Chancellor's decision denying sanctions should be upheld by the Court because: (1) all six of the declaratory judgment elements are supported by both the law and the facts; (2) even assuming *arguendo* all six elements may not be fully supported by both the facts and the law, it is clear beyond any argument that the Mayor and the five Council Members were on opposite sides and thus had a dispute over whether James Littleton had a right to hold over after the Mayor had fired him – this was the main issue in the case; and the matter was therefore not frivolous; (3) The Chancellor did not abuse his discretion in denying an award of sanctions; and, (4) The matter at issue, the purported right of a city attorney to hold over after being fired by the Mayor, is a matter of public concern.

#### APPELLEE'S ARGUMENT

##### ISSUE ONE

#### APPELLANTS' REQUEST FOR SANCTIONS WAS UNTIMELY

The Special Chancellor rendered and entered his decision on August 26, 2009, granting Mayor McAdams' requested injunctive and declaratory relief against James Littleton, enjoining him from holding himself out and/or purporting to act as the Greenwood City Attorney. (Rec.