

**SUPREME COURT OF MISSISSIPPI
COUR TO APPEALS OF THE STATE OF MISSISSPPI**

**MARIAN ALLEN
FELIX FENDERSON**

APPELLANTS

V.

Case No. 2010-CP-1314

T

**CITY OF LAUREL, MISSISSPPI; MAYOR ANN HESS;
CITY CLERK OF LAUREL, IN HERE OFFICIAL AND
INDIVIDUAL CAPACITY**

APPELLEES

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for Appellees certify that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualifications or recusal.

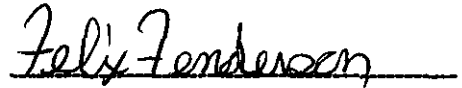
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2. Felix Fenderson – *Pro Se*
3. V. K. Smith
Law Firm of Bryan Nelson, PA
Attorney for Appellees: City of Laurel, Mississippi;
Mary Ann Hess; City Clerk of Laurel in her official and
Individual Capacity

4. Honorable Frank G. Vollar
Special Circuit Court Judge; 2nd District of Jones County, MS
P.O. Box 821335
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CITY OF LAUREL, MISSISSIPPI; MARY ANN HESS

APPELLEES

BRIEF FOR APPELLANTS

Come now Appellants and file their Brief in the above-styled appeal.

I. STATEMENT OF THE ISSUES

The issues are:

1. Did the Court by not addressing the mistakes/or fraud placed upon the court in the updating of Appellants complaints to address the statute of limitations?
2. Did the Court err by not addressing that Appellants did not have to take it before the election commission under Rule 23 because the Appellees were sued in civil suit for failure to perform a non-discretionary duty to place Appellants names on the ballot.

II. STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal by Marian Allen and Flex Fenderson from an order of the Circuit Court of the Second Judicial District of Jones County, Mississippi, dated July 30, 2010. Appellant's names were removed form a ballot even though Appellants were certified by City of Laurel Clerk's Office to be on the May 3, 2005 ballot. Appellants also filed a civil suit against Appellees, Federal Judge David Bramlette-Order on Remand on August 11, 2009 for Appellants state claims against the City of Laurel and Mary Ann Hess.

B. Course of Proceedings

On January 2, 2006, Appellants filed their complaint in the Circuit Court of Jones County.

On February 6, 2006, Appellants filed Notice of a claim.

On February 15, 2007 the Federal Government moved this case to the District Court of Mississippi.

On August 11, 2009 Judge Bramlette remanded this case back to the Circuit Court of Jones for Appellants state claims against The City of Laurel and Mary Ann Hess.

On September 30, 2009 Supreme Court appointed Judge Bridges. Judge Bridges rescued himself.

On December 3, 2009 the Supreme Court appointed Judge Frank Vollor.

On January 13, 2010 Appellants requested Summary Judgement during the hearing. Judge Vollor stated that two material facts exist in this case before he can grant Summary Judgement for the Appellants. (1) Notice of Intent to Sue filing date and (2) A Statue of Limitations.

On July 30, 2010 Judge Vollor grahted Summary Judgement for the Appellees for the following reasons:

- A. Appellants did not pursue their election contests in according to the Election Code, Title 23 of Mississippi Code.
- B. Appellants failed to file their complaint within the statue of limitations 11-46-11(3) MCA and/or 15-1-69MCA.
- C. Appellants state law claim were based alleged violations of the Federal Constitution and Preclearance under the Voting Rights Act. All underlying federal claims have been dismissed.
- D. Appellees are immune from Appellants' claim under Mississippi Tort Claim Act.

C. Statement of Facts

*Appellants' names were removed from a ballot.

*There is no authority in state law for a municipal party executive committee or City Clerk to remove one of members on it's own motion.(MS Attorney General Opinion dated August 5, 2005).

*The lower court ignored fraud that was stated I Appellants Summary Judgement .The Court failed to address the fraud placed upon the court about the updating of the Appellants Complaint filing date. This court had direct evidence that the Appellants filed their complaint On January 2, 2006 and the Clerk of Court updated the complaint December 29, 2006 intentionally placing Appellants complaints' out of compliance with statute of limitations.

*The court did not address Appellant's pleading that the Appellees were not immune from claims under the Mississippi Tort Claims Act.

III. Summary of Argument

The Court erred in not granting Summary Judgement for the Appellant's state law claims against Appellees City of Laurel and Mary Ann Hess. It was the ministerial duty of Mary Ann Hess to place the Appellants name on the ballot. This issue did mandate that Appellants had to precede under the Election Codes. There was also nothing in the election codes that Appellants could not pursue civil actions for violations of laws under the Mississippi Tort Act.

IV. Argument

- A. Judge Vollor has placed inference on the filing date of the Appellants complaint and that the statute of limitations barred this cause. The Appellants filed this cause on January 2, 2006. As per Receipt No. 19956 but the Clerk of Court dated Appellant's for December 29, 2006. As a matter of fact, Appellants had C. Brook the Clerk of Court to copy the entire complaint package the same Receipt No. 19957 of record clearly show the date.

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Appellants mailed their Notice of a Claim on February 8, 2006. Appelles admitted they had received a Notice of a Claim in the record.

In further defense of the Notice of a Claim, the Appellants substantially complied with the requirements, or in the alternative, the City of Laurel waived the ninety-day period, by not requesting a Stay. *City of Pascagoula v. Tomlinson*, 741 So.2d 224 (Miss. 1999), and *Jackson v. City of Booneville* 738 So.2d 124 (Miss. 1999).

In *Tomlinson*, the Plaintiff did not strictly follow the ninety-day notice requirement when he filed suit two weeks after providing notice of claim. Instead of dismissing the lawsuit, the Court held the proper remedy was to require the government entity to request a stay of the lawsuit. Should the government entity not request a stay, the issue would be considered waived. *Id.* at 229. See also *Williams v. Clay County*, 861 So. 2d 953, 977 (Miss. 2003); *Leflore County v. Givens* 754 So. 2d 1223, 1231-32 (Miss. 2000) and *Jones v. Miss School for the Blind* 758 So. 2d 428, 429 (Miss. 2000).

Over the years since the 1990's Judicial interpretation of the Notice requirement and the 90 day waiting period have resulted in evolving and changing Court pronouncements of the actions that satisfy these provision from strict compliance to substantial compliance and then in June of 2006 back to strict compliance. *South Central Regional Medical Center vs. Guffy* 930 So. 2d 1252, 1258 (Miss 2006).

Since, the Appellants filed their Notice of a Claim on February 6, 2006, the Appellants should be retroactive back to the substantial compliance before the strict compliance was reinstated in 2006 by the Supreme Court.

B. Appellants pled that even though these were election laws; the City of Laurel; had a Ministerial duty to place the Appellants names on the ballot once they had qualified. The Appellants pled that an act is not discretionary when imposed by law. *Womack v. City of Jackson* 804 So. 2d 1041 (15) (Miss. 2002). Quoting *L.W. McComb Separate Municipal School District* 754 So. 2d 1136, 1141 (Miss. 1999). The lower court dismissed this case on these issues but refused to address Appellants defenses.

V. Conclusion

This case has sat for FIVE(5) YEARS in a court of law. The Federal Court pointed out that the Appellants did not have Federal claims but remanded the case back to the Circuit Court of Jones County for the State Claims. The Order dismissed all parties involved EXCEPT The City of Laurel and Mary Ann Hess. Governmental officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald* 457 U.S. 800, 818 (1982). An act is not discretionary but ministerial if the duty is one which has been positively imposed by law and its performance required at a time and in a manner or under conditions which are being dependent upon the officer's judgement or

discretion. Steward ex rel. Womack v. City of Jackson, 804 So. 2d. 1041,1048(15)(Miss. 2002)(quoting L.W. McComb Separate Municipal School District 754 So. 2d. 1136,1141(Miss.1999).

Mary Ann Hess had no discretionary when it came to placing the Appellants' names on the ballot after qualification.

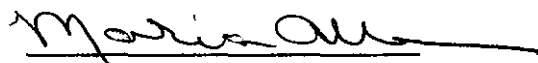
Every citizen knows that a person's name can not be removed from a ballot after qualification/certification by the Clerk of Courts even if elector died.

In conclusion, the 14th Amendment is a long standing fundamental right of a citizen. The Appellants had a fundamental right to fairness and proper due process in the lower court which they did not receive.

For the above reasons, Appellants request that this court reverse the lower court's ruling and render a judgement in favor of the Appellants.

Appellants request Summary Judgement as a Matter of Law and damages in the amount of \$500,000 and the performance bond of Mary Ann Hess.

Respectfully submitted this is 27 day ^{may}~~April~~, 2011


Marian Allen, Pro Se


Felix Fenderson, Pro Se

Certificate of Service

I, Marian Allen and Felix Fenderson do certify that WE forwarded, via mail/or hand delivered, the original and three copies of Brief for Appellants to the following:

Ms. Kathy Gillis, Clerk
Supreme Court of Mississippi
Court of Appeals
450 High Street
Jackson, MS 39201-1082

We also hereby , certify We have this day served a true and correct copy of the above and foregoing Brief to:

Honorable Frank Vollar
Special Judge
P.O. Box 821355
Vicksburg ,MS 39182

Via United States Mail
First Class, Postage Prepaid

V.K. Smith
P.O. Box Drawer 18109
Hattiesburg, MS 39404

Via United States Mail
First Class, Postage Prepaid

This the 09 day of May, 2011.



Marian Allen, Pro Se



Felix Fenderson, Pro Se