

IN THE SUPREME COURT OF MISSISSIPPI

No. 2015-CA-00966

CAROLYN McADAMS

Appellant

vs.

SHERIEL PERKINS

Appellee

REPLY BRIEF OF APPELLANT

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APPELLEE

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SUMMARY OF THE ARGUMENT

Perkins raises two procedural arguments via a motion to dismiss and an argument in Section III of her brief styled “Whether Appellant Has Confessed Issues on Appeal”. The Motion to Dismiss is addressed in a separate brief. The confession argument which Perkins addresses as PART III of her brief will be addressed below. Neither of these procedural arguments have any merit whatsoever. Plaintiff’s only substantive arguments appear to be grounded in the notion that the City’s determination that it had an interest in the election contest was wrong as a matter of law. That contention will likewise be addressed below.

ARGUMENT

A. Whether Signing the Bill of Exceptions is a Confession of the Merits

Counsel for Perkins prepared and submitted the Bill of Exceptions to the Mayor for signing pursuant to § 11-51-75 Miss. Code Ann. (1972). The signature of the Mayor is simply a requirement in the procedural process of allowing a person who desires to contest the action of a city council or other governmental entity through the bill of exceptions procedural vehicle. See *Reed v. Adams*, 111 So.2d 222 (Miss. 1959). How the Mayor's signature on the Bill of Exceptions somehow constitutes a "confession" is not explained. Moreover, no such confession argument was made to the Court below. In fact, Mr. Perkins in remarks before the Circuit Court referred to his client as the appellant and stated that "This matter, Your Honor, involves a notice of appeal under a bill of exceptions that was filed in regard to a decision of the Greenwood City Council on December 16, 2004." R.E. 6 at p. 7. As counsel stated to the Court, the Bill of Exceptions is the procedural device prepared by Mr. Perkins to facilitate her appeal of the action taken by the City Council. While agreeing that the bill of exceptions reflects actions taken and the decision made, such signature obviously does not constitute an agreement with Perkins that the resolution was prohibited by law or was otherwise improper. Such position is simply wrong. Perkins cites no legal authority to support such arguments. None exists.

B. Substantive Issues

While both the trial court and Perkins correctly cite the standards of review that should have guided the trial court's review of the City Council's resolution, the Court's ultimate conclusion reflects a failure to apply these standards. From some of the comments of the Court it appears that the trial court did not fully appreciate the extent of the undertaking in terms of the limitations of the legal work provided by the resolution adopted.

As reflected by Defendant's response to Perkins' Motion to Dismiss, the engagement letters make it clear that the resolution requires that the City be billed only for legal work involving issues relating to issues pertaining to alleged wrongdoing taken by City election officials. In short, the Court simply disagreed with the City Counsel's reasoning and logic in authorizing the retention of counsel to handle legal issues directed at claims being made relative to mistakes or wrongdoing that were alleged to have been done by various city officials. There was no intent by the City to "donate" money to McAdams. Rather, the clear intent seems to be to not saddle McAdams with the entire costs of upholding an election when numerous acts complained of arose out of conduct of city officials and to that extent, the City is simply taking responsibility for its own officials acting in their official capacity.

Apparently, however, without making an express finding of fact, the trial court concluded that the Council's decision that the City had an interest in the "claims" made was not even "fairly debatable". However, the Court's opinion makes no determination. See *City of Biloxi v. Hilbert*, 597 So.2d 1276, 1281 (Miss. 1992). The resolution expressly states that the City has an interest. It is undisputable that the expense of conducting such an election falls on the City. It is undisputed that the election contest in fact involves "claims" of malfeasance on the part of city employees, clerks and election officials all in their official capacity. The fact that claims of this type sometimes occur in election contests does not in any way alter the fact that the City as an entity has an interest in such claims or the outcome of such an election challenge. The council's conclusion that it had an interest both economically as well as a matter of policy cannot be called clearly erroneous, nor did the Court make such express finding.

Perkins argues that the Attorney General's Opinion to Brock, dated December 1, 2014 "never informed or defined any interest of the City of Greenwood" in the election contest. See Appellee's

Brief, p. 11. The resolution expressly notes the City Council's understanding that the City was not a named defendant in the election contest and expressly notes the claims of wrongdoing by election officials. This finding of fact by the City's resolution is not only not arbitrary and capricious, it is an undisputable fact.

The last paragraph of the Attorney General Opinion to Brock – R. 31 – cites to three separate prior Attorney General's opinions supportive of the City's decision to participate in the division of attorneys fees incurred as a result of the election contest which has now been decided adversely to Perkins and presumably will ultimately be heard by this Court via an appeal. It is simply not disputed that many, if not most, of the claims in that contest involve issues solely aimed at the election officials as opposed to something that McAdams was alleged to have done.

Furthermore, as reflected by the engagement letters submitted in response to Perkins' Motion to Dismiss, the City has not agreed to donate any money to McAdams. The City instead is through the resolution agreeing to accept responsibility to fund the defense of the claims aimed at the actions of its own elected officials and/or employees for the allegations or claims of wrongdoing, which claims if shown to be without merit, benefits the City by virtue of avoiding the expense of an election. Furthermore, rather than making a donation to McAdams, such action by the City is more akin to avoiding the imposition of an unfair tax upon McAdams for payment of attorney fees which were incurred due to alleged improper official actions of city officials.

Accordingly, it should be clear from the engagement letters that should this Court reverse the trial court's ruling; at some point Butler Snow will submit for consideration its statement for fees and expenses in a proper itemized format for consideration. While allocating the time and expense between the so-called overlapping litigation expenses may require both the law firm and the two clients to carefully review billing and even could result in something less than unanimous agreement

as to how the fees and expenses are apportioned or time records analyzed, it should be clear that the intent of the City is not to donate anything to McAdams, but simply accept financial responsibility for the alleged wrongdoing of its City officials carrying out official actions. Had such claims not been made, McAdams would not have been put to the legal expense in defending same. Thus, even if such expenses be deemed overlapping expenses, they were not caused by anything McAdams did.

The Court's statement that the resolution somehow constitutes an illegal donation to McAdams is, with respect, an inappropriate characterization of the concept of donation. Just as importantly, as the resolution and the engagement letters clearly reflect, the City's resolution was in no way a carte blanche assumption on the part of the City to pay McAdams' entire legal expenses. The resolution was a necessary first step in order for the City to act. *See* MS AG Op., Childers (May 2, 1997); *see also*, Authority in MS AG Op., Brock (R.31). Payment will be limited to the time spent to defend the claims arising from the City's actions. Even if these legal expenses are to be called "over-lapping" legal expenses because the Mayor as the named defendant may have to address the same issues, such fact does not transform the City's resolution to bear the legal costs associated with its own officials' alleged wrongdoing a "donation" to McAdams. How can it be said that a resolution seeking to apportion legal costs equitably between the entities alleged to have caused the faulty election be deemed unreasonable, arbitrary and capricious or other such type decision? Clearly, the resolution was proper, fair and certainly not illegal. The trial court in the election contest has, through a directed verdict, ruled in favor of McAdams. Perkins failed to prove the alleged wrongdoing on the part of the election officials. The City will save the expenses of holding a new election. These savings should be at least shared with McAdams via the council's intent expressed in the resolution.

The Circuit Court expressed concern relative to Attorney General's opinion allowing too much discretion on the part of the City Council. *See* Trial Court's Opinion, p. 6, (R.49). With respect, the discretion of the City Council as the elected body by the voters of the City is simply part of the governing process of our system. The exercise of that discretion is properly bridled by the standard of review of such actions through the standard of judicial review, which the parties agree apply. However, the court did not expressly find, nor could it, that the resolution was not supported by substantial evidence or was arbitrary or capricious. What may occur in the future must be based on the facts and circumstances of that case. The supposition by the trial court that future decisions of the City Council might be improperly influenced by political considerations is simply not a proper legal basis for the Court to consider in evaluating the propriety and legality of the Counsel's actions in this case. A trial court's review of the decision of a municipality is necessarily limited to the facts, circumstances and record before the Court in this case and this case only.

CONCLUSION

The resolution of the City authorizing the employment of counsel to defend the claims in the election contest to the extent the claims involve actions of City officials and to protect the City's interest in avoiding the expense of a special election was proper and reasonable and certainly within the discretion of the City Council. The trial court's ruling should be reversed and judgment rendered here for McAdams.

RESPECTFULLY SUBMITTED, this the 15th day of April, 2016.

UPSHAW, WILLIAMS, BIGGERS
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BY: s/ Marc A. Biggers
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CERTIFICATE OF SERVICE

I, Marc A. Biggers, of counsel to Appellant Carolyn McAdams, do hereby certify that I have this day served a true and correct copy of the above and foregoing document by mailing same by United States Mail with postage prepaid, to the following:

Honorable Margaret Carey-McCray
P.O. Box 1775
Greenville, MS 38702-1775

Leflore County Circuit Court Judge

Willie Perkins, Esq.
Perkins Law Firm
612 W. Washington Street
Greenwood, MS 38935-4242

Counsel for Appellee Sheriel F. Perkins

SO CERTIFIED, this the 15th day of April, 2016.

s/ Marc A. Biggers
MARC A. BIGGERS

CERTIFICATE OF FILING

I, Marc A. Biggers, counsel for Appellant Carolyn McAdams, hereby certify that I have this day electronically filed the foregoing document with the Clerk of the court using the ECF system, which sent notification to all registered users, including the opposing party's counsel.

SO CERTIFIED, this the 15th day of April, 2016.

s/ Marc A. Biggers
MARC A. BIGGERS