

IN SUPERIOR COURT

WALKER COUNTY, GEORGIA

BRUCE E. ROBERTS,
Petitioner

CIVIL ACTION

No 12 SU CV 1105

V.

**BEBE HEISKELL, SOLE COMMISSIONER
OF WALKER COUNTY, AND WALKER
COUNTY GEORGIA,**
Respondents

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

BACKGROUND

Petitioner's action seeks recovery of the amount of the alleged reduction in the judicial salary. Judge Donald C. Peppers, Sr., Petitioner's predecessor, was elected Judge of the State Court of Walker County, Georgia in 2010 for a four year term

beginning January 1, 2011. Judge Peppers resigned effective June 30, 2011. The Governor appointed Bruce E. Roberts as Judge of Walker State Court effective October 3, 2011. Respondent Sole Commissioner set the salary of Judge Roberts at a lesser amount than Judge Peppers had been receiving. Petitioner seeks to recover the difference in his salary and that paid to Judge Peppers.

Petitioner filed his Petition for Mandamus, Declaratory Judgment and Attorneys' Fees.

Respondents' filed their answer denying that Petitioner is entitled to the relief sought, and claims that Respondent was paid according to a contract agreed to by the parties. Numerous contractual defenses were alleged. Further, Respondents filed a Counterclaim for Breach of Contract, Intentional Infliction of Monetary Damages, Intentional Infliction of Emotional Distress, Attorneys Fees and Costs. Finally, Respondents filed a Motion for Partial Summary Judgment.

The parties are before the court on Petitioner's Motion for Summary Judgment and Respondents' Motion for Partial Summary Judgment.

CRITERIA FOR SUMMARY JUDGMENT

A. Summary Judgment

Pursuant to O.C.G.A. § 9-11-56 (c), summary judgment is authorized where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. O.C.G.A. § 9-11-56 (c).

B. Burden of Summary Judgment

The burden of establishing the non-existence of any genuine issue of material fact is on the movant with all doubts to be resolved against the movant. Bradbury v. Writing Sales, Div. of Matex, Inc., 174 Ga. App. 510 (1985). The defendant movant must negate at least one essential element entitling the plaintiff to recovery under every theory fairly drawn from the pleadings and the evidence. Solomon v. Barnett, 281 Ga. 130, (2006).

FACTS

Bebe Heiskell is the Sole Commissioner of Walker County, Georgia.

The minimum salary of the Judge of Walker County State Court is set at \$60,000 per year, but the Commissioner has the discretion to increase that amount. 1994 Ga.Laws 3226, 3227.

Judge Donald C. Peppers, Sr. was elected Judge of the State Court of Walker County, Georgia in 2010 for a four year term beginning January 1, 2011. Judge Peppers resigned effective June 30, 2011. The Governor appointed Bruce E. Roberts as Judge of Walker State Court effective October 3, 2011 to serve until December 31 after the election in 2012. Judge Roberts held office until December 31, 2012.

Walker County issued checks to Judge Peppers during his tenure in the amount of \$14,341.90 per month. \$750 per month of Judge Peppers' check represented reimbursement to Walker County from Catoosa County for times when Judge Peppers presided in Catoosa County. Catoosa County continues to "reimburse" Walker County \$750 per month. Judge Roberts was compensated by check from Walker County in the amount of \$8,333.33. per month. Judge Roberts was in office for 15 months. The parties agree that Judge Peppers presided from time to time in court in Catoosa County with consent of the Sole Commissioner of Walker County. Judge Roberts never presided in Catoosa County

After being defeated but while still the Judge of Walker County State Court Judge Roberts dismissed approximately 60 traffic cases that were pending in that Court.

Petitioner's claims were filed during his term of office. He requested Walker County to provide for his legal representation. Walker County did not provide that representation.

DISCUSSION

Judge's Salary and Mandamus

This court finds as a matter of law Petitioner was appointed Judge of the State Court of Walker County, Georgia on October 3, 2011 to serve a portion of the unexpired term of Judge Peters until December 31 after the election in 2012. Accordingly, Petitioner was entitled to receive the same compensation as Judge Peters

was receiving from Walker County at the time of Judge Peters' resignation Article VI, Section VII, Paragraph V of the 1983 Georgia Constitution, and Mandamus is available to recover that loss. Pike County, et. al. v. Calloway-Ingram, 292 Ga. 828 (2013).

Respondents contend that Petitioner agreed to and contracted for a lesser amount of salary, and they assert many contract defenses. The Petitioner's status as an incumbent for a portion of Judge Peters' unexpired term renders his salary a matter of law and not a matter of contract, and the asserted contract defenses do not have any application. See Best v. Maddox, 185 Ga. 78 (1937) where the court ruled that that former Superior Court Judge Maddox's salary claim was proper for Mandamus and that his salary was a matter of law and not a matter of contract.

Superior Court Judges are prohibited from "practicing law in any court" of this state or of the United States. O.C.G.A. 15-6-5. They are not prohibited from presiding in other circuits of this state under certain circumstances. See O.C.G.A. Secs. 15-6-13 through O.C.G.A. 15-6-15. However, they are not statutorily described as "full time" judges of their particular circuit. By contrast and by statute the Judgeship of Walker County State Court is a "full time" position. 1994 Ga.Laws 3226, 3227. The "full time" nature of the judicial office imposes no requirement on how much time the judge must devote to that Constitutional office. However, the "full time" designation prohibits other simultaneous judicial employment by the Judge of Walker County State Court. The amount of the salary which Judge Roberts is entitled to receive is only the salary for the State Court of Walker County. That amount does not include the \$750 per month "reimbursement" from Catoosa County. The approval of the Sole Commissioner of Walker County for the Judge of Walker County State Court to "moonlight" in another

county does not alter the law creating the “full time” nature of the judgeship. No other issues regarding the consensual “moonlighting” arrangement address themselves to the instant litigation.

Judge Peppers received \$13,591.90 per month from Walker County as compensation for serving as Judge of the State Court of Walker County. Judge Roberts was appointed to fill a portion of the unexpired term of Judge Peppers and was paid \$8,333.33 per month. During the term for which he was appointed Judge Roberts had his salary reduced by \$5,258.57 per month. Judge Roberts’ served 15 months as judge and is entitled to receive a total of \$78,878.55 as salary due and unpaid.

Declaratory Judgment

In view of the foregoing, Petitioner’s action for Declaratory Judgment is moot.

Attorney’s Fees

On Respondents’ failure to provide legal counsel to Petitioner after Petitioner requested Respondents to do so, Petitioner, then Judge, was compelled to provide his own attorney in this litigation involving the compensation of the Judge of Walker County State Court. Petitioner is prevailing herein in his Mandamus claim. Petitioner is entitled to Attorneys Fees. Yates v Gwinnett County, et. al., 265 Ga. 504 (1995). Jennings v McIntosh County Board of Commissioners, 276 Ga. 842 (2003).

Counterclaims and Immunity

The Respondents Counterclaimed against the Petitioner alleging a Breach of Contract, Intentional Infliction of Monetary Damages, Intentional Infliction of Emotional Distress, and Attorneys' Fees and Costs.

The basis of Respondents' claims for Intentional Infliction of Monetary Damages and Intentional Infliction of Emotional Distress arise from Judge Roberts having dismissed approximately 60 traffic cases that were pending in that Judge's court.

The propriety or impropriety of the Judge's having dismissed those cases is not an issue for this forum. On its' face it appears that the acts of Judge Roberts in dismissing the cases in the court where he presided were done in Petitioner's judicial capacity and within his jurisdiction. There is no allegation to the contrary.

"Our courts have consistently held that judges are immune from liability in civil actions for acts performed in their judicial capacity." Such immunity allows judges "to exercise within their lawful jurisdiction untrammelled determination without apprehension of subsequent damage suits." Citing [**321] the United States Supreme Court, we have noted that "[a] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction." Robinson v. Becker, 265 Ga. App. 692 (2004).

The judge has immunity or no immunity, not partial immunity. Respondents' contend that such immunity applies only to an original claim and not to a counterclaim. Not so. See Department of Human Resources v. Money, 222 Ga. App. 149 (1996) where judicial immunity successfully defeated a counterclaim. Further, hardly any judge, especially judicial officers with statewide jurisdiction, for hardly any reason would be advised to file hardly any suit unless the judge ascertained in advance of the judicial officer's suit that none of the judge's decisions had ever "distressed" his prospective adverse party.

Respondents' claim of damages for Breach of Contract claim is likewise barred by judicial immunity. Further, there was no contract in this case subject to having been breached.

Respondents' claim for attorneys' fees and costs depend upon the validity of the foregoing claims that have been ruled as being barred by judicial immunity. Consequently, the claims for attorneys' fees and costs are without foundation and must fail.

Respondents' Counterclaims, however, each are so clearly barred by judicial immunity that each is frivolous and each possess such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim or defense. O.C.G.A. 9-15-14(a)

Respondents' Motion for Partial Summary Judgment - Motion to Dismiss County

Respondents have moved to dismiss Walker County as a Respondent in regard to the Mandamus action to require payment of salary to the Petitioner. Respondents cite Bulloch County v. Ritzert, 213 Ga. 818 (1958) and City of Homerville v. Touchton, 282 Ga. 237 (2007). These two cases stand for the proposition that the writ of mandamus is personal and issues to the individual to compel performance, and it does not reach the office but is directed against the officer to compel him to perform.

Only as to the Mandamus action to compel payment of salary, Walker County should be dismissed as a Respondent.

The Respondents' Counterclaims were each filed on behalf of both named Respondents. The Counterclaims were filed months before Respondents' Motion for Partial Summary Judgment to remove the county as a named party. Therefore, the County is bound as a named party for the Counterclaims along with the Sole Commissioner in her official capacity.

JUDGMENT

IT IS HEREBY ORDERED AND ADJUDGED that:

- a. Petitioner's action for Mandamus is granted and Petitioner is entitled to judgment in the amount of \$78,878.55, and
- b. Respondent Sole Commissioner of Walker County, Georgia shall cause the aforesaid amount to be paid forthwith to Petitioner from funds of Walker County, Georgia, and

- c. Walker County, Georgia is dismissed as a Respondent but only dismissed as to Petitioner's Mandamus claim, and
- d. All counterclaims of Respondents are hereby dismissed, and
- e. Respondent Sole Commissioner of Walker County, Georgia shall be required to pay Petitioner's reasonable attorney's fees resulting from Petitioner's Mandamus action, and
- f. Walker County, Georgia shall be required through its' Sole Commissioner to pay reasonable attorney's fees of Petitioner in connection with Petitioner's defense of Respondents' Counterclaims, and
- g. All costs are taxed against Respondents.

SO ORDERED this 28th day of October, 2013.


Larry Salmon, Senior Judge,
Superior Courts of Georgia

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