

IN THE CHANCERY COURT OF LEFLORE COUNTY, MISSISSIPPI

**LEFLORE COUNTY BOARD OF
SUPERVISORS**

PETITIONER

VS.

CAUSE NO. 23-CV-00090-WJP

**MARCUS BANKS, IN HIS CAPACITY AS
COMMISSIONER OF GREENWOOD
LEFLORE HOSPITAL BOARD OF
COMMISSIONERS AND CITY OF
GREENWOOD**

RESPONDENTS

**RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO
PETITIONER'S REQUEST FOR A TEMPORARY INJUNCTION**

Without waiving their Motion for Recusal (Dkt. 11), Respondents Marcus Banks and the City of Greenwood submit this Memorandum of Law as ordered by the Court in opposition to Petitioner's request for a temporary injunction.

Introduction

Petitioner Leflore County Board of Supervisors seeks a temporary injunction to enjoin Marcus Banks from serving as a member on the Greenwood Leflore Hospital Board of Commissioners (Board). Mr. Banks' term as a Board member has expired. Petitioner erroneously claims that Mr. Banks cannot "hold over" as a Board member for more than 90 days. This Court should deny Petitioner's request for a temporary injunction for at least 2 reasons.

First, Petitioner's request for a temporary injunction is premature. Respondents intend to file a counterclaim regarding Board members that the County has or is allowing to serve in a hold over capacity, and the time to file a counterclaim has not yet expired. It appears that members of the Board other than Marcus Banks are or have served as hold over members of the Board. If there are other Board members who have been or are "hold overs," then equity requires the Court to treat all hold over members of the Board the same. Discovery is required

on these issues. Further, if there are multiple hold over members of the Board, then Petitioner is asking this Court to treat similarly situated Board members differently, which weighs strongly against granting Petitioner injunctive relief. Next, Petitioner is impermissibly attempting to take inequitable advantage of this hold over dispute by refusing to meaningfully attempt to jointly appoint a person to the Board position in dispute, which is the position held by Mr. Banks.

Second, Petitioner is wrong on the merits. Petitioner cobbles together several different statutes to assert that under Miss. Code Ann. § 21-15-41(1), no person can serve in a hold over capacity for more than 90 days “in a position that is required by law to be filled by appointment of the governing body of a municipality, or by mayoral appointment with the advice and consent of the council or alderman.” It is undisputed that Mr. Banks’ Board position is a joint appointment position – *i.e.*, the County and City must jointly appoint a person to fill that position (Dkt. 2 at ¶ 9). Because the Board position in question is a joint appointment, it is not an appointment by a municipality; therefore, § 21-15-41(1) does not apply. The applicable law permits Mr. Banks to hold over until the City and County jointly agree on an appointment to fill the Board position currently held by Mr. Banks.

Allegations

Petitioner asserts that Mr. Banks was appointed to the Board on September 24, 2018, and that he has now served more than 6 months after the expiration of his term (Dkt. 2 at ¶ 6). Petitioner alleges that Mr. Banks cannot serve longer than 90 days as a hold over member of the Board. Petitioner further alleges that “[t]he City of Greenwood, by and through the Mayor of Greenwood, has influenced Mr. Banks to illegally remain on his seat on the hospital board” (Dkt. 2 at ¶ 8).

Analysis

I. Petitioner's Request For A Temporary Injunction Is Premature.

Respondents intend to file a counterclaim to have all hold over members of the Board be treated the same. Respondents' time to file a counterclaim has not yet expired. It appears that members of the Board other than Marcus Banks are also hold over members of the Board. On information and believe, Petitioner permitted one of its Board appointees to serve on the Board in a hold over capacity for more than 90 days. On information and belief, Petitioner is permitting another one of its Board appointees to serve on the Board in a hold over capacity for more than 2 years. If there are multiple hold over members of the Board, then equity requires that the Court treat all hold over members of the Board the same. Discovery is required on these issues. Alternatively, to expedite matters, the Court should order the County to immediately disclose and document the appointment date of each Board member. If there are hold over members of the Board, the County should be ordered to promptly show cause why the County is attempting to treat Mr. Banks differently than other hold over members of the Board. Certainly, if there are multiple hold over members of the Board and the County is treating their hold over status differently, then Petitioner's request for injunctive relief should be denied.

The County is also impermissibly attempting to take inequitable advantage of this hold over dispute by refusing to meaningfully attempt to jointly appoint a person to the Board position currently held by Mr. Banks. Mr. Banks' Board position is a joint appointment of the City and County. The County proposed one person to the City to fill Mr. Banks' Board position, but the City rejected that proposal. The County refuses to propose any other persons to the Board position in dispute. Petitioner is essentially asking the Court to wade into a political dispute between the City and the County. The Court should not do so. Instead, the Court should hold the County's request for a temporary injunction in abeyance for at least 30 days and order the

City and the County to attempt in good faith to agree on a joint appointment to the disputed Board position.

II. Petitioner’s Request For A Temporary Injunction Should Be Denied On The Merits.

If the Court does not hold Petitioner’s request for a temporary injunction in abeyance, it should deny Petitioner’s request on the merits. Petitioner bears the burden of showing the need for injunctive relief. *A-1 Pallet Co. v. City of Jackson*, 40 So. 3d 563, 568 (Miss. 2010) (citation omitted). In deciding whether to issue a temporary or preliminary injunction, a chancellor must balance the following factors:

- (1) There exists a substantial likelihood that plaintiff will prevail on the merits;
- (2) The injunction is necessary to prevent irreparable injury;
- (3) Threatened injury to the plaintiffs outweighs the harm an injunction might do to the defendants; and
- (4) Entry of a preliminary injunction is consistent with the public interest.

Id. at 568–69 (quoting *City of Durant v. Humphreys County Mem’l Hosp./Extended Care Facility*, 587 So. 2d 244, 250 (Miss. 1991)). These factors weigh in favor of denying Petitioner’s request for an injunction.

Factor 1 – likelihood that Petitioner will prevail on the merits. Petitioner’s argument for injunctive relief is convoluted and likely to fail. Petitioner asserts that under § 25-1-17, if a person appointed to any county or municipal office “shall hold over after his regular term of office expires upon the authority given him to hold over until his successor is appointed or elected and qualified, a vacancy in such office shall occur thereby and it shall be filled in the manner prescribed by law” (Dkt. 2 at ¶ 9).

Petitioner next turns to § 41-13-29, which is the statute that governs community hospital board members, to incorrectly allege that “[t]here is no language in § 41-13-29 or any other

statute that authorizes a hospital board member to ‘hold over’ or continue to serve in office after the expiration of the term” (Dkt. 2 at ¶ 9).

Petitioner next and finally cites § 21-15-41 to assert that no person can serve in a hold over capacity for more than 90 days “in a position that is required by law to be filled by appointment of the governing body of a municipality, or by mayoral appointment with the advice and consent of the council or alderman.”

Petitioner’s analysis crumbles like a house of cards because it is undisputed that Mr. Banks’ Board position is a joint appointment position – *i.e.*, the County and City must jointly appointment a person to fill that position. Petitioner admits that “[t]he law is clear that the City of Greenwood and the Supervisors have the power to make a joint appointment to the seat that Mr. Banks is [allegedly] improperly holding” (Dkt. 2 at ¶ 9).

Petitioner asserts that under § 25-1-17, Mr. Banks cannot hold over because no authority permits him to do so (Dkt. 2 at ¶ 9). This is incorrect because the Office of the Attorney General of the State of Mississippi has issued Opinion No. 2018-00102 which concludes that “the Greenwood-Leflore Hospital is owned by the County and the City, both having a fifty percent (50%) ownership. Consequently, the Owners shall appoint a five (5) member board of trustees, which will have two (2) appointments made by the County and two (2) appointments made by the City. The fifth appointment to the Board of Trustees must be agreed to and appointed by both governing authorities.” *See* 2018 WL 3089313 at *1 (Miss. A.G.). Mr. Banks’ Board position is the “fifth appointment.” That position must remain filled by Mr. Banks until the City and County agree on a joint appointment. Petitioner identifies no authority that permits the “fifth appointment” Board position to remain vacant.

Section 21-15-41 is likewise of no assistance to Petitioner. Section 21-15-41 provides that no person can serve in a hold over capacity for more than 90 days if the position is required

by law to be filled by appointment of the governing body of a municipality. Because the Board position in question is a joint appointment, it is not an appointment by a municipality; therefore, § 21-15-41(1) does not apply. There is no limit on the number of days Mr. Banks can hold over, so he is permitted to hold over until the City and County jointly agree on an appointment to fill the Board position in dispute.

Finally, the Office of the Attorney General of the State of Mississippi has issued Opinion No. 2018-00424 which concludes that when term of a board member of a county hospital expires, that person may continue to serve as a “de facto officer,” § 25-1-37 is applicable, and “the Trustee’s actions on the board are valid and binding as official acts.” *See* 2012 WL 6065220 at *2 (Miss. A.G.). Section 25-1-37 states that a board vacancy must be “filled in the manner prescribed by law,” but Petitioner is not acting as “prescribed by law” because it will not work with the City to make a joint appointment to the Board.

Factor 2 – whether an injunction is necessary to prevent irreparable injury. The Petition does not identify any irreparable injury Petitioner will suffer if it is not granted injunctive relief. Petitioner does not even allege that Mr. Banks is disruptive at Board meetings or that he is somehow impeding the Board or preventing it from discharging its duties. Petitioner merely alleges an “injunction is necessary to prevent irreparable harm that would result from actions taken by Mr. Banks purporting to act as a hospital board member in the absence of the authority to do so” (Dkt. 2 at ¶ 11), but Petitioner does not identify any harm that it has – or allegedly will – suffer “from actions taken by Mr. Banks purporting to act as a hospital board member.”

Factor 3 – threatened injury to the plaintiff outweighs the harm an injunction might do to the defendants. As shown above, Petitioner has not identified any injury at all that it will allegedly suffer, whereas if the injunction is granted the City will be denied the “fifth appointment” – *i.e.*, the joint appointment – and not all Board positions will be filled to the

detriment of the residents of Leflore County. The purpose of a preliminary injunction is to protect the plaintiff from irreparable injury and to preserve the court's power to render a meaningful decision on the merits. *Secretary of State v. Gunn*, 75 So.3d 1015, 1021 (Miss. 2011). Here, Petitioner has not identified any injury at all that it will even allegedly suffer before the Court has the opportunity to render a meaningful decision on the merits.

Factor 4 – the public interest. The public interest strongly favors denying Petitioner's request for an injunction. The Board must have five members. Kicking Mr. Banks off the Board will result in an incomplete Board. The public interest is plainly to have all 5 Board positions filled. Moreover, it is not in the public's interest to have the jointly appointed Board position unfilled while Petitioner flouts its obligation to work with the City in good faith to agree on a joint appointment to the Board.

A balancing of the factors the Court must consider in deciding Petitioner's request for an injunction strongly weighs in favor of denying Petitioner's request.

Request for Relief

For these reasons, Petitioner's request for a temporary or preliminary injunction should be denied.

Dated: December 18, 2023.

Respectfully submitted,

BY: /s/ James W. Shelson

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CERTIFICATE OF SERVICE

I certify that on December 18, 2023, this document was electronically filed with the Clerk of the Court using the MEC System, which sent notification of such filing to all counsel of record.

/s/ James W. Shelson

JAMES W. SHELSON