

IN THE CIRCUIT COURT OF LEFLORE COUNTY MISSISSIPPI

SHERIEL F. PERKINS AND THE STATE
OF MISSISSIPPI ON RELATION OF
SHERIEL F. PERKINS

PLAINTIFF

VS

FILED

JUL 29 2015

CAROLYN McADAMS

ELMUS STOCKSTILL, CIRCUIT CLERK

DEFENDANT

BY: Elmer Stahl C.E.

OPINION AND ORDER ON
DEFENDANTS MOTION FOR
CLARIFICATION
AND RECONSIDERATION

This matter came on to be heard before the Court upon Defendant's Motion for Clarification, Reconsideration and Defendant's Pending Motions and the Court, after hearing argument of Counsel, reviewing Defendant's Memorandum supporting her Motion for summary Judgment and the authorities submitted does now hereby FIND, DETERMINE, ADJUDICATE AND ORDER AS FOLLOWS:

FACTS

Plaintiff started this matter by filing a challenge to the Mayoral Election of June 3, 2014 in which she and the Defendant were the sole participants. Defendant was declared the victor by a 206 vote margin. The parties wished to circumvent an extensive Discovery period and to assist in this effort enter a Scheduling Order to which both sides agreed.

Defendant timely filed her Motion for Summary Judgment which was heard by this Court and the Court entered its Order on May 18, 2015 which found and determined ...

“Petitioner raises sufficient issues that are genuine to this dispute, if proved by proper evidence, could possibly change the results of the Mayoral Election or could possibly prove the will of the electorate had been frustrated. Therefore, the Summary Judgment filed by respondent is hereby overruled and denied.”

Defendant takes serious objection to the Court’s decision and has filed her Motion For Clarification, Reconsideration and Rulings on Defendant’s Pending Motions. And asserts the Court

1. Failed to rule on Defendant’s pending Motions to Strike the affidavits of Rossetta Harris and Derrick Simmons and the amended affidavit of Rossetta Harris, and
2. The Court’s Order failed to set forth with particularity what factual disputes the Jury will be asked to resolve and which material fact issues were found to be in dispute pursuant to MRCP 56(d).

In addition to the Motion to Clarify, Reconsider and Amend the Judgment and Order of the Court, Defendant submitted to the Court a letter directed to the Court personally and requesting the Court to explain, elucidate or spell out why the Court ruled as it did, what thought processes it used to reach its decision and how the Court’s decision would impact the work load of Defendant and the length of trial. Defendant did not file her letter with the Court Clerk therefore, in Order to make certain the Record is complete the letter from Defendant dated May 29, 2015 is appended hereto and made a part of this Order. Defendant failed to waive the Oath as a courtesy to the Court.

DISCUSSION

As to the objection of Defendant that the Court failed to rule on Defendant's Motion to Strike the affidavits of Rossetta Harris and Derrick Simmons:

The Court must have misunderstood Defendant's intent when the Court asked.

"Did you have something that you wish to say"?

"We do have a motion to strike certain affidavits, but that motion is part and parcel of the motion for summary judgment". (Tr. 4, Lines 12-19)

The Court assumed its ruling on the summary judgment motion included its decision on the Motions to Strike. The Court admits it should have made its intent more definite and clear, and finds that the Defendant's Motions to Strike the Affidavits of Rossetta Harris and Derrick Simmons should be and said Motions are hereby overruled.

Further, the Court finds the amended affidavit of Derrick Simmons should be accepted and filed in this cause, though it may be technically filed out of time the Court finds this to be harmless.

The Court is of the opinion the Plaintiff has set forth sufficiently genuine issues of material facts which must be submitted to the Finder of Facts to conclude this matter.

The Court is abundantly aware that Plaintiff is obligated to bring forth significant probative evidence demonstrating the existence of the triable issue of fact. *Stuckey v. Provident Bank*, 912 So. 2d 859. Yet Plaintiff does not have to prove all of the elements of its case in order to survive a summary judgment motion; only that there are genuine issues of material fact. *Partin v. North Mississippi Medical Center, Inc.* 929 So 2d 924.

Our Supreme Court cautions that all summary judgment motions should be viewed with great skepticism and the trial court should err on the side of denying the motion. *Daniels v. GNB*,

Inc. 629 So. 2d 595.

The Defendant's letter to the Court dated May 29, 2015 seeks the Court to explain and divulge or clarify what factual disputes the jury will be asked to resolve. Of course the Court can not properly answer this inquiry but would suggest Defendant be prepared to respond to any factual dispute properly pled and supported by proper evidence.

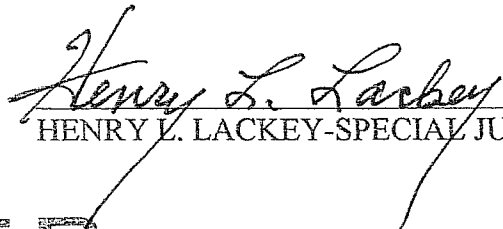
CONCLUSION AND ORDER

The Court concludes that the Motion for Clarification and Rulings on Defendant's Pending Motions should be and is hereby over ruled with exception of the Court making more definite its Overruling the parties' Motions to Strike.

The prior Order of this Court dated May 18, 2015 is hereby reaffirmed, confirmed and approved as the Order of this Court except as amended herein.

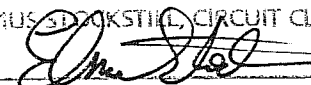
The Defendant is hereby assessed with all costs, expenses and attorney's fees incurred by Plaintiff occasioned by the Motions for Summary Judgment filed by Defendant herein

SO ORDERED AND ADJUDGED ON THIS THE 28TH DAY OF JULY, 2015


HENRY L. LACKEY-SPECIAL JUDGE

FILED

JUL 29 2015

ELMUS S. DOCKSTILL, CIRCUIT CLERK
BY:  D.C.

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May 29, 2015

VIA U.S. MAIL & EMAIL

Honorable Henry L. Lackey
Senior Status Judge
P.O. Drawer T
Calhoun City, MS 38916
henrylackey@hotmail.com

RE: *Sheriel F. Perkins and the State of Mississippi on Relation of Sheriel F. Perkins v. Carolyn McAdams*; No. 2013-0047 CI

Dear Judge Lackey:

Enclosed for your consideration please find Defendant Carolyn McAdams's Motion for Clarification, Reconsideration, and Rulings on Defendant's Pending Motions, which has been mailed to the Leflore County Circuit Clerk today for filing.

Defendant is in receipt of Your Honor's May 18, 2015 Order denying her motion for summary judgment. However, Defendant respectfully seeks clarification and/or reconsideration of the May 18, 2015 Order. We make this request for two reasons. First, the Court's May 18, 2015 Order did not address the Defendant's two pending Motions to Strike Affidavits, nor did it specifically address the issue of Plaintiff's failure to plead fraud with particularity. Second, in order to estimate the amount of time needed for trial and to identify the necessary evidence, the Defendant seeks clarification as to what factual disputes the jury will be asked to resolve. Accordingly, Defendant would respectfully request a status conference with Your Honor to discuss the Court's position on the following issues, after which we would also respectfully ask that the summary judgment Order be amended to identify the counts in which material fact issues were found to be in dispute, as provided for in Mississippi Rule of Civil Procedure 56(d):

1. Are there material facts in dispute regarding Count Two of Plaintiff's Complaint: Illegal Votes by Non-Residents? If so, what summary judgment evidence did Plaintiff come forward with to create this material fact dispute?
2. Are there material facts in dispute regarding Counts Three and Four of Plaintiff's Complaint addressing illegal/invalid absentee ballots? If so, what summary judgment evidence did Plaintiff come forward with to create this material fact dispute?
3. Are there material facts in dispute regarding Count Five of Plaintiff's Complaint: Denial of Statutory Assistance to Voters? If so, what summary judgment evidence did Plaintiff come forward with to create this material fact dispute?

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4. Are there material facts in dispute regarding Count Six of Plaintiff's Complaint: Statutory Locks and Seals on Certain Ballot Box? If so, what summary judgment evidence did Plaintiff come forward with to create this material fact dispute?
5. Whether the Court finds that Plaintiff pled her claim of fraud with particularity as required by Mississippi Rule of Civil Procedure 9(b).
6. If the Court finds Plaintiff pled her claim of fraud with particularity, whether the Court finds the unauthenticated video and accompanying affidavit of Latoyia Rose constitutes competent summary judgment evidence that could constitute clear and convincing proof of fraud sufficient to warrant a new election.
7. If the Court finds the unauthenticated video and accompanying affidavit of Latoyia Rose do not constitute competent summary judgment evidence, are there material facts in dispute regarding Count Seven of Plaintiff's Complaint: Voter Fraud? If so, what summary judgment evidence did Plaintiff come forward with to create this material fact dispute?
8. Are there material facts in dispute regarding Count Eight of Plaintiff's Complaint: Absentee Ballots in Wrong Box? If so, what summary judgment evidence did Plaintiff come forward with to create this material fact dispute?
9. Whether the Court finds the original affidavits of Rossetta Harris and Derrick Simmons constituted competent summary judgment evidence and should not be excluded on grounds that they are conclusory and self-serving.
10. If the Court accepts the original affidavits of Rossetta Harris and Derrick Simmons, whether the Court is denying Defendant's motion to strike these affidavits.
11. Whether the Court finds the amended affidavit of Rossetta Harris was timely filed under Mississippi Rule of Civil Procedure 56(e), or whether the untimely filing is excusable.
12. If the Court does not bar the amended affidavit of Rossetta Harris on procedural grounds, whether the Court finds the amended affidavit of Rossetta Harris constituted competent summary judgment evidence and should not be excluded on grounds that they are conclusory and self-serving.
13. If the Court accepts the amended affidavit of Rossetta Harris, whether the Court is denying Defendant's motion to strike this amended affidavit.
14. If the Court is granting Defendant's motion to strike the original affidavits of Rossetta Harris and Derrick Simmons and the amended affidavit of Rossetta Harris, are there material facts in dispute regarding Plaintiff's allegations

pertaining to illegal votes cast in Wards 1 and 2? If so, what summary judgment evidence did Plaintiff come forward with to create this material fact dispute?

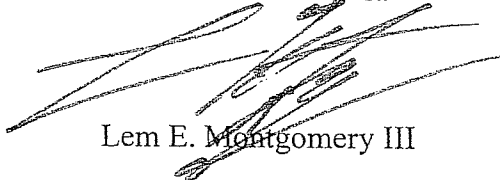
15. If the Court is granting Defendant's motion to strike the original affidavits of Rossetta Harris and Derrick Simmons and the amended affidavit of Rossetta Harris, what material factual disputes remain that are sufficient to call into question the outcome of the June 4, 2013 mayoral election, i.e. what summary judgment proof has Plaintiff come forward with that calls into question enough votes to effect the 206 vote margin favoring Defendant?

We raise these issues with the utmost respect toward the Court and only in hopes that, if at all possible, the issues might be narrowed to identify, control, and limit the scope of the necessary evidence for trial. In this regard, it is important to note that the agreed pretrial order prepared by the parties lists more than 200 witnesses and 100 exhibits. In addition to the foregoing and as presented in the enclosed Motion, Defendant would also respectfully urge Your Honor to rule on all pending motions and to reconsider the Court's denial of summary judgment and for this Court to grant summary judgment in favor of the Defendant, Mayor Carolyn McAdams.

Thank you for your consideration of this matter.

Sincerely,

BUTLER SNOW LLP



Lem E. Montgomery III

LEM:te

Enclosures

cc: Mark W. Garriga, Esq. (via email)
Kathleen I. Carrington, Esq. (via email)
William J. Perkins, Esq. (via email)
Linda F. Coleman, Esq. (via email)

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ELMUS JACKSON, CIRCUIT CLERK
BY:  D.C.