

**IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT**

**ANN SAUNDERS; SABREEN SHARRIEF;
and DOROTHY TRIPLETT**

PLAINTIFFS

VS.

CIVIL ACTION NO. 25CH1:23-CV-00421

**HONORABLE MICHAEL K. RANDOLPH, in his official
capacity as Chief Justice of the Mississippi Supreme Court;
ZACK WALLACE, in his official capacity as Circuit Clerk of the
Circuit Court of Hinds County, Mississippi; and GREG SNOWDEN,
in his official capacity as Director of the Administrative Office of Courts** **DEFENDANTS**

and

**STATE OF MISSISSIPPI ex rel.
ATTORNEY GENERAL LYNN FITCH**

DEFENDANT-INTERVENOR

**MEMORANDUM OF AUTHORITIES IN SUPPORT OF ZACK WALLACE'S
MOTION TO DISMISS ZACK WALLACE AS A DEFENDANT**

INTRODUCTION

This matter arises out of the recent passage of 2023 House Bill 1020 (“HB 1020”). Plaintiffs seek to prevent the enactment of HB 1020, the appointment of temporary special circuit judges, and the creation of a new inferior court in Hinds County, Mississippi.

Pursuant to Mississippi Rules of Civil Procedure 8, 12(b)(6) and 21, Defendant Zack Wallace, in his official capacity as Circuit Clerk of the Circuit Court of Hinds County, Mississippi (“Clerk Wallace”), moves for an order dismissing him from the case because he is not a proper or necessary party and because the Complaint and proposed unverified Amended Complaint fail to state a claim against him upon which relief can be granted. In short, Clerk Wallace has no role in this lawsuit, is not a proper or necessary party, and should be dismissed.

Alternatively, for the reasons explained more fully below, Clerk Wallace must be dismissed because coercive relief cannot be entered against Clerk Wallace because the Plaintiffs lack statutory or common-law authority to sue Clerk Wallace directly for any ministerial act imposed on him by HB 1020 in his official capacity as the Circuit Clerk for the Circuit Court of Hinds County, Mississippi.

FACTS

On April 21, 2023, Governor Tate Reeves signed into law HB 1020. HB 1020 requires the Chief Justice of the Mississippi Supreme Court to appoint four (4) temporary special circuit judges for the Hinds County Circuit Court. 2023 HB 1020, § 1(1). It also creates an inferior court called the Capitol Complex Improvement District court (“CCID Court”) to function as a municipal court within the Capitol Complex Improvement District. *Id.* § 4(1)(a).

On April 24, 2023, Ann Saunders, Sabreen Sharrief, and Dorothy Triplett (“Plaintiffs”) filed a Complaint for Declaratory and Injunctive Relief against Chief Justice Randolph, Clerk Wallace, and Director of the Administrative Office of Courts Greg Snowden, all in their official capacities. MEC #2.

Clerk Wallace files the instant motion to dismiss himself in his official capacity as Circuit Clerk of the Circuit Court of Hinds County, Mississippi.

ARGUMENT

A motion to dismiss under Rule 12(b)(6) of the Mississippi Rules of Civil Procedure “tests the legal sufficiency of the complaint.” *Triplett v. Brunt-Ward Chevrolet*, 812 So. 2d 1061, 1064 (Miss. Ct. App. 2001) (affirming dismissal of complaint). Dismissal must be granted if, accepting the complaint’s well-pled factual allegations as true, there is no set of facts that would allow

plaintiff to prevail. *Rose v. Tullos*, 994 So. 2d 734, 737 (Miss. 2008) (affirming dismissal of complaint for failure to state a claim). A court “need not accept as true . . . unwarranted factual inferences . . . which will not defeat a Rule 12(b)(6) motion to dismiss,” *Corr Wireless Commc’ns, L.L.C. v. AT&T, Inc.*, 2013 WL 4829287, at *2 (N.D. Miss. Sept. 10, 2013) (internal quotations omitted), and “[c]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to defeat a motion to dismiss,” *Rose*, 994 So. 2d at 739.

Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. MISS. R. CIV. P. 21. Any claim against a party may be severed and proceeded with separately. *Id.*

Rule 8 of the Mississippi Rules of Civil Procedure requires a plaintiff to set forth factual allegations “either direct or inferential, respecting each material element necessary to sustain recovery under some actionable legal theory.” *Townsend v. What a Combo Inc.*, 281 So. 3d 43, 46 (Miss. Ct. App. 2019); *see also Chalk v. Bertholf*, 980 So. 2d 290, 296 (Miss. Ct. App. 2007) (“Although Rule 8 abolishes many technical requirements of pleadings, it does not eliminate the necessity of stating circumstances, occurrences, and events which support the proffered claim.”). To survive a motion to dismiss pursuant to Rule 12(b)(6), a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Merideth v. Merideth*, 987 So. 2d 477, 481 (Miss. Ct. App. 2008).

I. CLERK WALLACE IS NOT A PROPER OR NECESSARY PARTY.

Any suggestion that Clerk Wallace is a necessary party is simply incorrect. Although the proposed unverified Amended Complaint alleges that “As Circuit Clerk, Mr. Wallace effectuates the assignment of cases to judges on the Hinds County Circuit Court and would be responsible for the ongoing assignment of cases to judges illegally serving on that Court under the challenged

legislation” (§ 18) there is no “case or controversy” with respect to Clerk Wallace, as he lacks sufficient interest to be deemed an adverse litigant in this matter. Similarly, pursuant to *Chancery Clerk of Chickasaw County, Mississippi v. Wallace*, 646 F. 2d 151 (5th Cir. 1981), Clerk Wallace adopts and incorporates by reference Defendant Honorable Michael K. Randolph’s argument that there exists no justiciable issue to be determined between Plaintiffs and Clerk Wallace.

Under Rule 19(a)(1), a party is "necessary" only if "in his absence complete relief cannot be accorded among those already parties." Miss. R. Civ. P. 19(a)(1).¹

In this case, “complete relief” can "be accorded among those already parties." In the proposed unverified Amended Complaint, Plaintiffs seek a declaratory judgment that Sections 1 and 4 of HB 1020 and § 9-1-105(2) are unconstitutional. *Id.* at 18-19, ¶¶ A-C. Plaintiffs further seek a preliminary and permanent injunction to enjoin Chief Justice Randolph from appointing temporary special circuit judges to the Hinds County Circuit Court pursuant to HB 1020 or § 9-1-105(2); to enjoin Chief Justice Randolph from appointing a judge to the CCID Court; to enjoin Clerk Wallace from assigning cases to any appointed temporary special circuit judges; to enjoin the creation of the CCID Court; and to enjoin Defendant Snowden from providing any funding in connection with any of the foregoing. *Id.* at 19, ¶¶ D-F, H-I. Additionally, Plaintiffs seek a preliminary and permanent injunction “requiring the termination of all judges appointed to the Hinds County Circuit Court pursuant to MISS. CODE ANN. § 9-1-105(2).” *Id.* at 19, ¶ G.

In either case, any action or inaction by Clerk Wallace is necessary for any party to obtain "complete relief." Miss. R. Civ. P. 19(a)(1).

¹ In some cases, a party may be "necessary" if "he claims an interest relating to the subject of the action." Miss. R. Civ. P. 19(a)(2). However, Clerk Wallace does not claim an interest in the subject of this action.

Rather, the proper defendant is the agency or official charged with enforcing the statute.⁴ Accordingly, Clerk Wallace is not the proper defendant to the extent that the Plaintiffs' claims are justiciable.

In sum, because complete relief can be accorded among those already parties, Clerk Wallace is not a necessary party under Rule 19 and must be dismissed pursuant to Rules 8, 12(b)(6) and 21.

II. INJUNCTIVE RELIEF MAY NOT BE ENTERED AGAINST CLERK WALLACE.

The proposed unverified Amended Complaint's statement that Clerk Wallace is a proper party because he "effectuates the assignment of cases to judges on the Hinds County Circuit Court and would be responsible for the ongoing assignment of cases to judges illegally serving on that Court under the challenged legislation" (§ 18) ignores the longstanding rule that coercive relief cannot be entered against Clerk Wallace. As the Supreme Court has explained, "[N]o ... governmental official ... can exercise power beyond their constitutional authority." *See Fordice v. Bryan*, 651 So.2d 998, 1003 (Miss. 1995) (quoting *State ex rel. Sego v. Kirkpatrick*, 86 N.M. 359, 524 P.2d 975 (1974)). This clear rule bars whatever "injunctive relief" the proposed unverified Amended Complaint might seek against Clerk Wallace.

Because the Supreme Court has made clear that an injunction may not be granted against governmental officials "beyond their constitutional authority," the only constitutional authority held by the Circuit Clerk are codified in statutes as his ministerial duties, therefore, it follows that injunctive relief cannot be afforded against Clerk Wallace. *See Barbour v. State ex rel. Hood*, 974 So. 2d 232, 238 (Miss. 2008).

⁴ *See, e.g., Walker v. President of the Senate*, 658 So. 2d 1200 (Fla. 5th DCA 1995) ("[W]hen a plaintiff challenges the constitutionality of a rule of law, it is the state official designated to enforce that rule who is the proper defendant, even when that party has made no attempt to enforce the rule." (citations omitted)).

To be clear, the unavailability of injunctive relief against Clerk Wallace need not be addressed in this case. Clerk Wallace must be dismissed for the far simpler reasons that he has no role to play in this case. The unavailability of such relief as a matter of law is, however, an additional and independent reason for dismissing Clerk Wallace from the case.

III. NEITHER STATUTE NOR COMMON LAW GRANTS PLAINTIFFS THE AUTHORITY TO DIRECTLY SUE CLERK WALLACE.

Finally, Clerk Wallace must be dismissed because Plaintiffs lacks authority to sue the Circuit Clerk of the Circuit Court of Hinds County, Mississippi based the allegations the Complaint and proposed unverified Amended Complaint. The Circuit Clerk's duties are prescribed by the Mississippi Rules of Civil Procedure, Mississippi Rule of Criminal Procedure, Mississippi Rules of Appellate Procedure, and the Uniform Civil Rules of Circuit and County Court Practice.

Here, Plaintiffs have not detailed how the actions or inactions of Clerk Wallace grant them the statutory or common law grounds to directly sue Clerk Wallace.

Once again, the Court need not reach this issue because Clerk Wallace must be dismissed for the threshold reason that he simply has no possible role to play in the case. If, however, the Court does reach the issue, the Plaintiffs' lack of authority to sue Clerk Wallace is an additional, independent ground for Clerk Wallace's dismissal.

CONCLUSION

For the foregoing reasons, Defendant Zack Wallace, in his official capacity as Circuit Clerk of the Circuit Court of Hinds County, Mississippi, should be dismissed from the case.

This, the 9th day of May, 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Scherrie L. Prince, one of the attorneys for Defendant Zack Wallace, in his official capacity as Circuit Clerk of the Circuit Court of Hinds County, Mississippi, do hereby certify that I have this date caused to be filed with the Clerk of the Court a true and correct copy of the above and foregoing via the Court's MEC filing system, which sent notification of such filing to all counsel of record.

This, the 9th day of May, 2023.

/s/ Scherrie L. Prince
SCHERRIE L. PRINCE

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