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

ANN SAUNDERS; SABREEN SHARRIEF; and DOROTHY TRIPLETT — PLAINTIFFS

v. — 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

PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION AND WITHDRAWAL OF CLAIM FOR RELIEF

Plaintiffs submit this supplemental memorandum in support of their Motion for Preliminary Injunction (Dkt. #10) for the purpose of addressing the Court's inquiry regarding the impact a determination that § 9-1-105(2) is unconstitutional would have on judicial actions taken in cases presided over by judges appointed under Miss Code Ann. § 9-1-105(2). Plaintiffs also hereby withdraw their request for preliminary injunction set forth in paragraph G of their Complaint. (Dkt. 2). Plaintiffs no longer seek a preliminary injunction requiring the termination of all judges appointed to the Hinds County Circuit Court pursuant to Miss. Code Ann. § 9-1-105(2).

I. A Finding That § 9-1-105(2) is Unconstitutional Would Not Subject All Prior Rulings by Appointed Judges to Challenge.

The "de facto officer doctrine" makes clear that granting the preliminary injunction Plaintiffs seek in regard to § 9-1-105(2) will not provide a basis to attack decisions of § 9-1-105(2) judges. For well over 100 years, Mississippi law has been clear that actions performed by officials in possession of office, including judicial office, do not lose their validity simply because it is later discovered that they undertook their role without proper legal authority. Overwhelming authority in Mississippi and beyond affirms that decisions of such "de facto officials" as valid and binding.

The Mississippi Supreme Court nearly 120 years ago embraced the de facto official doctrine as it applies to judges. There, the Mississippi Supreme Court made crystal clear that even constitutional infirmities in the authority of judges to hold office do not provide a basis to attack their rulings. "We adopt, however, as the true view, that one in possession of an office, judicial or not, who exercises the functions of the position, is to be considered, as to all persons dealing with him, rightfully in possession of the office, and that his acts as such are valid and binding, and this, too, whether he fails to take the oath required, or even though it should be judicially determined that the law under which he was appointed or selected was unconstitutional." *Powers v. State*, 36 So. 6, 8 (Miss. 1904); *see also Bird v. State,* 122 So. 539, 540 (Miss. 1929) ("It is well settled in this state that the acts of a *de facto* judge are valid, regardless of whether he was properly appointed or qualified or not. . . . [T]he appellant was not in position to challenge his right to hold office, the right to question his holding the office being for the state alone to raise in appropriate proceedings."); *Nelson v. State*, 626 So. 2d 121, 125 (Miss. 1993) ("These precedents compel the conclusion that Nelson's prayer for reversal based upon the failure to comply with the statute regarding the appointment of Judge Evans must fail."). Again, the law is clear: past decisions by judges appointed under § 9-1-105(2) are not open to challenge.

There can be no doubt on this point: judges appointed to Mississippi courts pursuant to § 9-1-105(2) ("105(2) judges") fall squarely under this doctrine. If this Court determines, as it should, that the challenged judicial appointments under H.B. 1020 and § 9-1-105(2) are unconstitutional, that decision would not mean that the rulings of Mississippi's 105(2) judges had no legal status under Mississippi law. Finding § 9-1-105(2) unconstitutional would not immediately render them "non-judges." It would simply place them in the well-worn category of "de facto judges" whose rulings are still enforceable. The Mississippi Supreme Court, in *Adams v. Mississippi State Bank*, made clear that our § 105(2) judges are indeed de facto officials: "An officer de facto is one who exercises the powers and discharges the functions of an office, being then in possession of the same under color of authority, but without actual right thereto." 23 So. 395, 398 (Miss. 1897). Mississippi's § 105(2) judges who have already been appointed and issued rulings fit squarely within that definition. Here, § 105(2) judges have assumed their judicial role cloaked with the indicia of authority. They were selected by the Chief Justice of our highest court, approved by a majority of our Supreme Court justices, and identified in public orders as duly-selected under Mississippi law. The orders of the § 105(2) judges have been respected and enforced just as those of any other judge, and the authority of those judges has been recognized across Mississippi's legal system. Their decisions are not open to challenge.

"The principle is placed on the high ground of public policy, and for the protection of those having official business to transact, and to prevent a failure of public justice." 43 Am.Jur. Public Officers, § 495, at 242 (1942).

It is not only the decisions of the Mississippi Supreme Court that should assuage this Court's concerns. The Mississippi legislature has adopted this rule in statute. Miss. Code Ann. § 25-1-37 provides: "The official acts of any person in possession of a public office and exercising the functions thereof shall be valid and binding as official acts in regard to all persons interested

or affected thereby, whether such person be lawfully entitled to hold the office or not and whether such person be lawfully qualified or not; but such person shall be liable to all the penalties imposed by law for usurping or unlawfully holding office, or for exercising the functions thereof without lawful right or without being qualified according to law." In response to the court's concern that all past decisions of Mississippi's § 105(2) judges will be open to attack, our Legislature has spoken clearly.[1] They will not.

II. The De Facto Officials Doctrine Applies to COVID Court

It is unclear to Plaintiffs whether this Court desired a response concerning the impact of granting the requested relief on "COVID courts," and Plaintiffs concede that they are uncertain as to what constitutes a "COVID court." Plaintiffs add simply that the analysis and decisional protections set forth herein are not limited to Mississippi's § 105(2) judges. This doctrine would apply with equal force to decisions rendered by judges duly appointed through other legal authority to other courts.

III. Plaintiffs Formally Withdraw Their Request for a Preliminary Injunction Terminating Judges Appointed to the Hinds County Circuit Court Pursuant to § 9-1-105(2).

In the Complaint, Plaintiffs asked this Court to issue a preliminary injunction requiring the termination of all judges appointed to the Hinds County Circuit Court pursuant to Miss. Code Ann. § 9-1-105(2). Complaint (Dkt. #2) at G., p. 19. Upon reflection, Plaintiffs have determined that they no longer wish to pursue this portion of their "Relief Requested." As "masters of their complaint," Plaintiffs are free to abandon requested remedies as they deem appropriate.

[1] Plaintiffs note that the language regarding possible liability for "usurping or unlawfully holding office" or "exercising the functions thereof without lawful right or without being qualified" clearly does not apply in regard to § 105(2) judges. As set forth above, Mississippi's § 105(2) judges were appointed, by name, and by and through a valid order from the State's highest court, which categorically excludes them from the liability language in § 25-1-37, which is solely intended to address circumstances when an office is taken by ill-gotten or dishonest means, such as through usurpation or a crime. Our § 105(2) judges engaged in no such conduct.

In regard to judicial appointment, Plaintiffs continue to seek a preliminary injunction as described in paragraph D of their Complaint – "enjoining Defendant Randolph [or the State to the extent Justice Randolph is bound thereby] from appointing judges to the Hinds County Circuit Court pursuant to H.B. 1020 or Miss. Code Ann. § 9-1-105(2)." Complaint (Dkt. #2) at D., p. 19.

IV. This Court Can Now Issue an Injunction Without Concern for Attacks on Past Judicial Rulings or the Immediate Termination of Sitting Circuit Court Judges.

Due to the overwhelming authority supporting the proposition that the decisions of "de facto judges" are not open to attack, and because Plaintiffs have abandoned their request for a preliminary injunction requiring that judges currently serving on the Hinds County Circuit Court pursuant to a § 9-1-105(2) appointment, this court may enjoin **future** appointments to the Hinds County Circuit Court under H.B. 1020 or § 9-1-105(2) without concern that such relief will open the floodgates on legal challenges to past judicial decisions or interfere with the work of the judges currently serving on the Hinds County Circuit Court. Plaintiffs urge the Court to adhere to the plain language of the Mississippi Constitution and grant such relief.

CONCLUSION

The conclusion is inescapable that H.B. 1020 violates the plain terms of the Mississippi Constitution, and further appointment of judges under 9-1-105(2) is similarly unconstitutional. That being so, the best course is to prevent additional unconstitutional appointments while this case remains pending. Because of the clearly established doctrine of de facto officials, granting Plaintiffs the preliminary injunction they seek will not open hundreds of past judicial decisions to a wave of attacks. The injunctive relief we seek will prevent the illegal appointment of judges under H.B. 1020, prevent future appointments of judges under § 9-1-105(2), and enable those judges currently serving appointments under § 9-

1-105(2) to continue their work. This posture will enable the parties and the Court to move toward ultimate resolution of the case without exposing Plaintiffs to the irreparable harm previously recognized by this court.

Dated May 11, 2023

/s/ Cliff Johnson
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CERTIFICATE OF SERVICE

I, Cliff Johnson, attorney for plaintiffs, do hereby certify that I have this day filed the foregoing document with the Court's electronic case filing system, which sent a true and correct copy to all counsel of record.

Dated: May 11, 2023

s/ *Cliff Johnson*

Cliff Johnson