

IN THE CHANCERY COURT FOR LOUDON COUNTY, TENNESSEE

Lisa Niles, Clerk of the Circuit Court, Probate Court, Criminal Court, General Sessions Court, Juvenile Court, and Child Support Court for Loudon County, Tennessee,

Petitioner,

v.

No. 12267

Rollen "Buddy" Bradshaw,
Loudon County Mayor,

Defendant.

MEMORANDUM OPINION

The Petitioner, Lisa Niles, Clerk of the Circuit Court, Probate Court, Criminal Court, General Sessions Court, Juvenile Court, and Child Support Courts for Loudon County, Tennessee, brings suit against Loudon County Mayor, Rollen "Buddy" Bradshaw, pursuant to Tennessee Code Annotated § 8-20-101 *et seq.*, seeking additional deputy clerks, and additional funds for existing and future employees, and to recover the costs and litigation expenses associated with her suit.

Petitioner contends that she and her existing employees devote all of their working time to the completion of their various official tasks, but that they cannot discharge their duties during the regular workday. In addition, she avers that she has difficulty keeping trained staff at existing pay rates, especially in competition with other potential employers who may offer higher pay in a similar, but less demanding work environment.

An Amended Petition was filed by the Petitioner after the Defendant had answered, but the averments of the amended pleadings are summarized above, to which the Defendant filed an Amended Answer.

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LOUDON CO. CLERK & MASTER COB

The Defendant's answer to the Amended Sworn Petition avers, among other things, 1) that the Petition fails to state a claim upon which relief can be granted, 2) that Petitioner cannot satisfy the statutory burden required by Tenn. Code Ann. § 8-20-103 in that she is not devoting her entire working time to the discharge of her official duties, and 3) that she is estopped from seeking any relief that was not presented to the County in an estimated budget proposal submitted pursuant to the County Budgeting Law of 1957.

The case came on to be heard the 10th day of December 2015.

At the outset the Court holds that the Petition does state a claim for which relief can be granted, and that the Defendant has failed to show, as he affirmatively alleged, that the Petitioner does not devote her entire working day to the completion of the duties of her office.

Furthermore, the Defendant admitted during his testimony that he has no basis to refute Petitioner's claim that additional deputy clerks would increase the amount of money collected by the Petitioner for the benefit of the County; that he did not know if the Petitioner has had sufficient staff in prior years; and that he has no reason to believe that she was not sincere in her need for additional deputy clerks.

The evidence preponderates heavily in favor of Petitioner's contention that over the last two years she has been unable to complete the requirements of her office by working full time during the course of the regular business day, and that she and/or her deputy clerks are often required to work late nights or take short lunch breaks to keep up with their required tasks. Because of this she needs additional staff and pay to continue doing her job as Clerk of the various courts.

The evidence is unrefuted that the workload in her office has increased to the point that she cannot now accomplish all of her required tasks with the present compliment of deputy clerks devoting their full time, not merely to completion of the statutory requirements, but all of the related, but necessary, tasks that the clerks must perform on a daily basis in Circuit, Criminal, General Sessions, Probate, and Child Support Courts for Loudon County, Tennessee.

The Defendant placed particular emphasis on the number of case filings in Loudon County Circuit, Criminal, and General Sessions Courts, and on the completion of "statutory" duties as opposed to activities not specifically required by statute (Exhibit 2). From the evidence, however, completion of specific statutory tasks by Petitioner and her deputies hardly conveys the magnitude of the problems faced by them in the performance of statutory duties, for there is an

extraordinary amount of human activity associated with these duties that cannot be adequately enumerated or described by an act of the legislature, but which must also be accomplished daily, as if in a state of urgency, as every day produces a new wave of court activity that must be immediately dealt with and which has the effect of delaying work originating days, weeks, months, or years earlier.

The Court finds that the testimony of the Deputy Court Clerk, Penny Glasgow, and of the Monroe County Circuit Court Clerk, Marty Cook, who is also President of the Tennessee Court Clerks Association, to be particularly persuasive and entirely consistent with the Petitioner's testimony.

For example, Penny Glasgow testified that the Petitioner's staff could "touch" a single civil file fifteen to twenty times before the case goes into the courtroom for the judge to hear; court clerks must attend court to facilitate the work of the judges; the courts could not function without having court clerks available before, during, and after judicial proceedings; as all of the statutory requirements are underway, clerks must wait on people who come to the window seeking some service or information; clerks must drop what other work they are doing to answer the telephone as people call for assistance or to conduct some business over the phone; two to three hundred subpoenas are issued every week; orders of protection and child support hearings all originate from and go forward based upon activities performed by the deputy clerks in Petitioner's offices, some of which require immediate attention by a judge; payments of money must be accepted at the window or received over the phone by people using credit cards; and in the midst of all of this (and undoubtedly many other activities) senior clerks try to cross-train deputy clerks so that the office can be kept up and running in the absence of an employee or in times of heavy activity.

Petitioner and her witnesses clearly established that the volume of work necessitates frequent late nights by court employees and short lunch breaks just to try and keep up with the day's activities and the necessary paperwork or computer entries generated, or to be generated based upon those activities.

The testimony of Ms. Galsgow, while persuasive in itself, was reinforced by the testimony of Monroe County Circuit Court Clerk, Marty Cook, who described the impossible task of ever getting "caught up" in a work environment substantially similar to that faced by the Petitioner. Work that is unfinished on one day, but scheduled for completion on the next, can, on

the very next day, get bumped further along in time by new litigation that demands immediate attention. Just for comparison purposes, when she began her job as Circuit Court Clerk for Monroe County in 1986, she had five employees, including herself; at the time of trial Ms. Cook had seventeen full-time deputy clerks and two part-time employees, but cannot make room for more (which she needs) because there is no space remaining in the Monroe County Courthouse.

The Defendant only called one live witness, but attempted to prove his case primarily by circumstantial evidence, elicited primarily in cross examination of Petitioner and her witnesses, related to the number of case filings for the courts for which Petitioner is responsible, and by making comparison to the case numbers, employees and work performed by other court clerks in other counties.

The deposition testimony of Ann Goldston, Circuit, Criminal, and General Sessions Court Clerk for Roane County was introduced (Exhibit 29), as was the deposition of Darrell Davis, the Circuit, Criminal, and General Sessions Court Clerk for Meigs County (Exhibit 28). But exact comparisons are impossible to make and tend to prove as much or more for the Petitioner as for the Defendant.

There is absolutely no testimony from any witness to show that the Petitioner and her staff are not devoting their full time to the orderly performance of their assigned tasks; that she and/or her employees are not having to work many late nights to keep up with their work; or that they are engaged in activities during the workday that have nothing to do with their official duties. Such testimony favoring Defendant's position simply does not exist.

Where comparisons are available, the populations and court organizations are most similar to Loudon County in Roane (Exhibits 6 – 14 of Exhibit 29), Monroe (Exhibits 25, 26, 27), McMinn (Exhibits 14, 15), and Jefferson (Exhibits 16, 17, 18) Counties. The population of Blount County (Exhibits 8, 10, 11) is too large relative to Loudon County, and the population of Meigs County is too small for there to be helpful comparisons.

But there are several aspects of this suit that were touched upon by Mr. Darrell Davis, Circuit Court Clerk for Meigs County, Tennessee, that help put this case in perspective, and which illustrate the potential problems being dealt with by the Petitioner in this lawsuit.

During the course of his testimony, Mr. Davis was asked these questions and gave the following answers:

Q. Have you ever had to file one of these salary suits?

A. No. It's --- it's political suicide in a small county to do this. We have a -- circuit -- Clerk and Master did it and he's very unpopular person now, but it's an appointed position -- we fight for salaries continuously, you know. I couldn't get employees to work for this. I've had nine turnovers in the ten years that I've been here and the biggest part of that is salary issues.

(Deposition of Darrell Davis, Exhibit 28, page 17, line 17 through page 18, line 1)

Q. You mentioned the political process with respect to budget requests, as an office holder is it something that you have to build over time if necessary with respect to the amount of help you have and the salaries that they receive?

A. What do you mean? I'm not --

Q. Well, what I'm saying is, is it -- you said "political suicide" to try to put all your eggs in one basket in one fiscal year.

A. You have to prove yourself, you know, to the commission. Obviously, we've done that to get to where we are, but it all comes down to money. I mean, you've got what you've got to work with and -- my girls understand that. They understand -- I would -- probably irrelevant to anything, but my girls need more money. I have no avenue of getting it. I'll go to the commission, you know, and they turn us down. We did put the request in for more salary.

(Deposition of Darrell Davis, Exhibit 28, page 18, line 22 through page 19, line 14)

Q. And in order to get and keep good help you have to pay them well; is that right?

A. If you want to keep them. That's why I've had nine turnovers, you know, and like I said before, I think there's one person in this courthouse that works that's single. It's not feasible. My girls would be close to getting government assistance if they weren't married, and that's ashamed to say it that way, but that's where we're at with the salary. The quality of work we have to do in the circuit court clerk's office is not repetition, just stamp this, stamp that, it's an avenue of everything, and I told him earlier that it's not so much the case loads are going up that rapidly, it's everybody's wanting a piece of that case now. All the reopenings of the child supports has really grew in our courts to where, you know, there's more work to that one file that's been there forever, you know. You're not even counting that on the reportings, that doesn't reflect, but we're still doing the work, you know, on that.

(Deposition of Darrell Davis, Exhibit 28, page 20, line 3 through page 20, line 22)

Mr. Davis was describing the political situation that exists in Meigs County where, on account of its small population, it is a practical impossibility for him to hire good employees

at a pay scale necessary to retain them; neither can he bring suit to get the help and pay that he needs; the personal animus of other public officials toward anyone like Mr. Davis who would go against county commissioners and others who control the flow of money, and who have broader and more influential contact with voters is sufficient to crush an elected office holder like Mr. Davis at the next election even if he has the facts on his side; his employees need more pay, but it is a practical impossibility for him to obtain it if he wants to retain his office; consequently, he has to tolerate frequent departures of deputy clerks from his office, and those who stay are faced with the growing demand for court services requiring longer and more detailed work on their part; the case numbers may not be growing, but the human activity associated with every detail of every case is growing rapidly. Even if Mr. Davis cannot risk his job by bringing salary suits against the county, there are others who either can do so or are willing to take the risk of political retaliation. But as Mr. Davis said, court proceedings are an "avenue of everything," where "everybody's wanting a piece of that case now." That fairly sums up the daily situation faced by the Petitioner in the conduct of her office, and explains her need for more help and better pay in spite of the potential for adverse political consequences to herself.

Thus, we see how modest fluctuations in the number of actual case filings do not accurately represent the daily demands faced by the Petitioner from one year to the next as collateral work continues to increase, and suits originating in previous years impact the work load of court clerks in subsequent years.

The Petitioner also contends that the present pay scale for her employees makes it difficult for her to keep good employees in competition with jobs available in other offices or with private employers who offer better working conditions at higher salaries.

She testified to four departures of deputy clerks in the last four years, at least two of whom left voluntarily for reasons unrelated to their job duties or pay. But two of them, Amanda Smith and Teeka Sutphin, left for better jobs paying more money. Teeka Sutphin started as Deputy Clerk in Juvenile Court in October 2005 and left in July 2006 for a job with a real estate lawyer in Knoxville at a higher salary. Amanda Smith began working for Petitioner doing domestic relations, child support, and criminal duties in July or August of 2006, but left for a job in the Lenoir City Municipal Court Clerk's office starting at \$31,000. She now earns \$36,000 annually.

As to the last remaining issue of the Petitioner's standing to bring this suit for having amended her budget request, the Court finds that amendments are common events in the budgeting process and that they do not estop her from bringing suit for a judicial determination of the issues in the event that the parties are unable to agree prior to bringing suit. There is no indication that the County Commission was deprived from considering the amended budget request so as to reach some administrative solution to the issues now being determined in this suit.

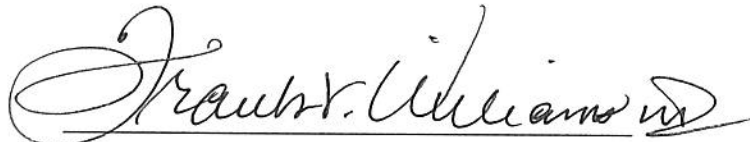
The evidence supports Petitioner's need for four new employees in her various offices as follows: One new deputy clerk/bookkeeper at a salary of \$32,000, and three new deputy clerks at a salary of \$25,500. The Petitioner may start new employees at a lower pay and make graduated increases in salary based upon their performance and ability as incentive for further improvement, so that in any given year the County may not actually incur the entire costs for these salaries.

Furthermore, the annual 2% increase granted by the County to other county employees during the two previous fiscal years, 2014-2015 and 2015-2016, have been denied to the Petitioner's employees while this suit was pending. These raises should be paid retroactively to the Petitioner's employees.

Finally, the Petitioner is entitled to recover her attorney fees and litigation expenses for bringing this suit, and, if the parties cannot agree, Petitioner's attorney shall prepare a schedule of time and activities together with necessary expenses and submit to the Court for further proceedings.

Petitioner's counsel shall prepare a judgment consistent herewith and submit to opposing counsel for approval as to form and content. Costs are taxed to the Defendant.

This 29 day of December, 2015



Chancellor

STATE OF TENN. LOUDON COUNTY
I, Fred Chaney, Clerk and Master for said county, certify this to be a true & correct copy of the original which is on file in my office at the Court House in Loudon. Witness my hand and seal at office, this
Dec 29 2015
Fred Chaney Clerk
By Connie Blush D.C.

CERTIFICATE OF CLERK
STATE OF TENN. LOUDON COUNTY
I, Fred Chaney, Clerk and Master for said county hereby certify that I have handed or placed in the United States mail a true & accurate copy of the foregoing document to the parties and/or counsel this
12-29 2015
By Connie Blush D.C.