

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
_____ DIVISION

CITY OF LITTLE ROCK

PLAINTIFF

V. CASE NO. 60CV-18-

VIC FLEMING, Judge of the Little Rock District Court, 2nd Division; MARK D. LEVERETT, Judge of the Little Rock District Court, 3rd Division; and, ALICE LIGHTLE, Judge of the Little Rock District Court, 1st Division;

DEFENDANTS

COMPLAINT FOR DECLARATORY JUDGMENT

The Plaintiff, the City of Little Rock, Arkansas (“City”), seeks a declaratory judgment and states:

1. This is an action for declaratory judgment as to whether the City of Little Rock owes vacation (PTO) payouts and sick leave (STD) payouts to three district court judges.
2. No statute in Arkansas provides that an elected judge receives PTO or STD, nor that they are entitled to any payout for unused PTO or STD.
3. This action is to determine if one former, and two sitting judges, in the Little Rock District Court are nonetheless entitled to such payments.
4. Defendant Alice Lightle (“Judge Lightle”) was, at all times relevant to this litigation, either the properly appointed or popularly elected, judge of the Little Rock District Court, First Division.

5. Upon information and belief, the City believes that Judge Lightle is now a resident of Evergreen, Jefferson County, Colorado; however, all acts relevant to this matter occurred within Little Rock, Pulaski County, Arkansas.

6. Defendant Vic Fleming (“Judge Fleming”) was, at all times relevant to this litigation, the popularly elected judge of the Little Rock District Court, Second Division.

7. Judge Fleming is a resident of Little Rock, Pulaski County, Arkansas; all acts relevant to this matter occurred within Little Rock, Pulaski County, Arkansas.

8. Defendant Mark D. Leverett (“Judge Leverett”) was, at all times relevant to this litigation, the popularly elected judge of the Little Rock District Court, Third Division.

9. Judge Leverett is a resident of Little Rock, Pulaski County, Arkansas; all acts relevant to this matter occurred within Little Rock, Pulaski County, Arkansas.

10. The Defendants assert the following amounts of money are owed to them for unused PTO and STD:

- (a) Judge Lightle claims entitlement to \$21,288.06 which is comprised of \$12,694.17 of unused PTO, and \$8,593.89 of unused STD;
- (b) Judge Fleming claims entitlement to \$45,641.30 which is comprised of \$20,643.50 of unused PTO, and \$24,997.80 of unused STD;
- (c) Judge Leverett claims entitlement to \$11,509.26 which is comprised of \$7,719.24 of unused PTO, and \$3,790.02 of unused STD;
- (d) All Defendants may contend entitlement to pre-litigation interests on the amounts set forth above.

11. This Court has jurisdiction to consider a request for declaratory judgment. Ark Code Ann. §§ 16-11-101 to -102 (West Supp. 2019); Ark. R. Civ. Proc. 57.

12. Venue for this action is proper in the Pulaski Circuit Court. Ark. Code Ann. § 16-106-101 (West Supp. 2019).

13. The factual background in this litigation is as follows:

- (a) The Arkansas General Assembly authorized two divisions of the Little Rock Municipal Court pursuant to 1915 ARK. ACTS 87;
- (b) The Arkansas General Assembly designated one division of the Little Rock Municipal Court to handle criminal cases, and a second division to handle traffic cases, pursuant to 1919 ARK. ACTS 312;
- (c) Neither 1915 ARK. ACTS 87, nor 1919 ARK. ACTS 312 required action by the governing body of the City to create the Little Rock Municipal Court or to create the divisions of such court;
- (d) The City created a third division of the Little Rock Municipal Court in Little Rock, Ark., Ordinance No. 16,601 (February 15, 1994), pursuant to authority granted by the Arkansas General Assembly in 1992 ARK. ACTS 39;
- (e) Judge Lightle was appointed by the Governor to serve as Judge of the Little Rock District Court, First Division, on July 2, 2007; she was later popularly elected to serve as Judge of the Little Rock District Court, First Division, on November 4, 2008;
- (f) Judge Fleming was popularly elected to serve as Judge of the Little Rock Municipal Court, Second Division, on November 5, 1996, and began service on January 1, 1997; with the adoption of Amendment 80 to the Arkansas Constitution in 2000, the nomenclature was changed to Judge of the Little Rock District Court, Second Division;

- (g) Judge Leverett was popularly elected to serve as Judge of the Little Rock District Court, Third Division on November 4, 2007;
- (h) In Article 7, § 1 of the Constitution of Arkansas, prior to the adoption of Amendment 80, vested the judicial power of the State in various courts and permitted the Arkansas General Assembly to “vest such jurisdiction as may be deemed necessary in municipal corporation courts....”;
- (i) In Article 7, § 14 of the Constitution of Arkansas, prior to the adoption of Amendment 80, the superintending control and appellate jurisdiction of corporation courts was vested in state circuit courts;
- (j) Until January 1, 2005, some jurisdictional questions for corporation courts were controlled by Article 7, § 43 of the Constitution of Arkansas;
- (k) On November 7, 2000, the electors of the State of Arkansas approved Amendment 80 to the Constitution of Arkansas;
- (l) On the effective date of July 1, 2001, the Constitution of Arkansas stated that “[t]he judicial power is vested in the Judicial Department of state government, consisting of a Supreme Court and other courts established by this Constitution” Ark. Const. amend. 80 § 1;
- (m) Section 7 of Amendment 80 established a District Court as one of the courts established by the State through the Constitution of Arkansas;
- (n) Judge Fleming, as a Judge of the Little Rock Municipal Court, Second Division at the time Amendment 80 was adopted, continued in office as a District Judge pursuant to Section 19 (A) (3) of Amendment 80;

- (o) The jurisdiction of the Little Rock Municipal Court was vested in the Little Rock District Court effective January 1, 2005, pursuant to Section 19 (B) (2) of Amendment 80;
- (p) The Arkansas General Assembly, in order to implement the provisions of Amendment 80, created a three-tiered unified court system in Ark. Code Ann. 16-17-1110 (West Supp. 2019);
- (q) The divisions of the Little Rock Municipal Court were officially designated as divisions of the Little Rock District Court pursuant to Ark. Code Ann. § 16-17-110 (24)(B) (West 2013);
- (r) This designation became official on January 1, 2017, pursuant to Ark. Code Ann. § 16-17-110 (24) (C) (West 2013).
- (s) At times relevant to this litigation, Judge Lightle, Judge Fleming and Judge Leverett officially became known as Little Rock State District Judges on January 1, 2017, pursuant to Ark. Code Ann. § 16-17-1104 (a) (West 2013);
- (t) The salary payment for a Little Rock Municipal Judge was made by the City up to and through December 31, 2016 pursuant to Ark. Code Ann. § 16-17-1107 (West 2013);
- (u) Effective January 1, 2017, the salary payment for a Little Rock State District Court Judge is made by the State of Arkansas;
- (v) Even so, at all times relevant to this litigation the City had no authority to discipline, suspend, terminate, or remove from office a Little Rock Municipal Judge since these actions have been exclusively within the power of the State of Arkansas acting through the Judicial Discipline and

Disability Commission created in 1988 pursuant to Amendment 66 of the Constitution of Arkansas;

- (w) Further, the City was directed what range of salary to pay a Little Rock Municipal Judge by the General Assembly;
- (x) If a vacancy occurred in the position of Little Rock Municipal Judge, the City had no authority to hire or appoint a person to fill that vacancy, nor to determine the qualifications of the person to fill that vacancy; Ark. Const., amend. XXIX, § 1; Ark. Const., amend. LXXX, § 17 (B); such appointment is made by the Governor of the State of Arkansas pursuant to Ark. Code Ann. § 16-17-132 (c) (West 2013);
- (y) Once the divisions of the Little Rock Municipal Court were created, the City lacked authority to dissolve or disband any of the divisions; *City of Cabot v. Thompson*, 286 Ark. 395, 398, 692 S.W.2d 235, 237 (1985);
- (z) As noted above, the Arkansas General Assembly, and the Arkansas Supreme Court, have the authority to establish subject matter jurisdiction for the Little Rock Municipal Court, not the City; now, pursuant to Amendment 80, this authority rests with the Arkansas General Assembly and the Arkansas Supreme Court; *see* Ark. Code Ann. §§ 16-17-1110 (24)(B) (West Supp. 2019); 16-17-1113 (West Supp. 2013); Sup. Ct. Admin. Order 18;
- (aa) If there is a need for a special judge in the Little Rock State District Court, only the Chief Justice of the Arkansas Supreme Court has the authority to

temporarily assign a special judge to the court; Ark. Const., amend. LXXX, § 13 (C); Sup. Ct. Admin. Order 16, § 1;

- (bb) Pursuant to Section 14 of Amendment 80, the City could not prevent a Little Rock Municipal Judge from also maintaining a private practice of law while serving on the Little Rock Municipal Court;
- (cc) Upon information and belief, Judge Leverett maintained such a private practice until he officially became a Little Rock State District Judge on January 1, 2017;
- (dd) The City could not set the hours of operation of a Municipal Court, nor could the City set the hours of work for the Defendants;
- (ee) In short, the City did not have the right to control the Defendants, and it is this right to control that determines an employment relationship; *see, ConAgra Foods, Inc., v. Draper*, 372 Ark. 361, 366, 276 S.W.3d 244, 248- 9 (2008);
- (ff) It has been recognized by the U.S. Supreme Court that the mere payment of a judge's salary does not make that judge an employee of the entity paying the salary; *cf., McMillan v. Monroe Cty, Ala.*, 520 U.S. 781, 791 (1997);
- (gg) Evidently, under the impression that the Defendants were regular full-time employees of the City, information was shared to suggest that each Defendant would receive a PTO payout and an STD payout upon the formal designation as State District Court judges;

- (hh) However, no appropriation was made, and no such payment was made, because it was pointed out to the Little Rock Board of Directors that the Defendants were not City employees;
- (ii) In addition, because of the ability of each Defendant to engage in the private practice of law, even if an employment relationship was found – which the City does not concede -- at most a Defendant could be considered RPTP – Regular Part Time Personnel – and the maximum annual PTO or STD available, and the maximum possible accrual, is far below the claims in this litigation;
- (jj) Even so, the use of PTO and STD by the City does not come without certain requirements so that an abuse of PTO or STD can lead to termination, a possibility that does not apply to a person who is not a City employee – for example, the Defendants;
- (kk) Further, the City has never paid anyone PTO payout or STD payout who continued to serve in the same position:
 - (A) Yet, Judge Fleming continues to serve in the position he held prior to January 1, 2017, despite the change in nomenclature and final application of all provisions of Amendment 80; and,
 - (B) Judge Leverett continues to serve in the position he held prior to January 1, 2017, despite the change in nomenclature and final application of all provisions of Amendment 80;

- (ll) Neither Judge Lightle nor Judge Leverett held a position with the Little Rock Municipal Court prior to the time such a position was more clearly identified as a state judicial position as set forth in Amendment 80;
- (mm) For the City to pay PTO or STD to an individual not authorized to receive such a payment, and who is not a City employee, would constitute an illegal exaction as set forth in Ark. Const., art. 16, § 13.
- (nn) The Defendants have made a claim to the payments set forth in paragraph 10 of this Complaint;
- (oo) Further, the maximum compensation paid to a judge of the Little Rock Municipal Court is that set forth in the range of the relevant act of the General Assembly and the City cannot violate the provisions of such an act.

14. Declaratory judgment is proper when the following conditions are met:

- (a) A justiciable controversy is present;
- (b) The controversy exists between parties;
- (c) The party seeking relief has a legal interest in the controversy; and
- (d) The issue for declaratory judgment is ripe for decision.

See, Jegley v. Picado, 249 Ark. 600, 613, 80 S.W.3d 332, 337 (2002).

15. These elements are all present in this litigation, and the City is entitled to a decision as to its legal responsibilities.

16. Pursuant to Ark. R. Civ. Proc. 57, the City requests a timely and prompt consideration of these issues in this matter.

WHEREFORE, the City prays that it be granted declaratory relief as appropriate and that the Court rule that the claims of the Defendants are denied; specifically, that despite the fact the

City paid salaries to the Defendants pursuant to restrictions contained in state law, the Defendants were not employees of the City entitled to the same benefits, and subject to the same rules and regulations, as a regular full-time employee of the City; that since Judge Lightle and Judge Leverett did not serve on the Little Rock Municipal Court until it became a state court pursuant to Amendment 80, they were certainly never regular full-time employees of the City; that if somehow the Defendants are deemed Regular Part Time Personnel of the City, that any recovery definitely be limited by the limited PTO and STD for such employees, and by any accumulation of such benefits for such employees; further, that even if Regular Part Time Personnel of the City, the Defendants receive only the differential of the maximum statutory amount permitted by the Arkansas General Assembly to pay a judge of the Little Rock Municipal Court; and all other just, equitable relief, and declaratory judgment to which the City is entitled.

OFFICE OF THE CITY ATTORNEY
500 West Markham, Ste. 310
Little Rock, Arkansas 72201
(T) 501-371-4527

By: /s/ Thomas M. Carpenter
Thomas M. Carpenter
tcarpenter@littlerock.gov
Arkansas License No. 77024
Counsel for the City of Little Rock, Arkansas