

No. 01-15-00583-CV

IN THE
FIRST COURT OF APPEALS
at Houston, Texas

THE HONORABLE MARK HENRY,
GALVESTON COUNTY JUDGE,
Appellant
v.
THE HONORABLE LONNIE COX
Appellee

From the 56th Judicial District Court of
Galveston County, Texas

AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT

John B. Dahill
State Bar No. 05310430
TEXAS CONFERENCE OF URBAN COUNTIES
500 W. 13th Street
Austin, Texas 78701
(512) 476-6174 telephone
(512) 478-5122 facsimile

Table of Contents

Table of Contents	2
Table of Authorities	3
Identity and Interest of Amicus Curiae	5
Applicable Precedent	6
Errors Below	9
Senate Bill 1913	10
Trial Court Did Not Apply Proper Standard of Review	12
Prayer	14
Certificate of Service	15
Certificate of Compliance	16

Table of Authorities

Cases

<i>Commissioners Court of Lubbock County v. Martin,</i> 471 S.W.2d 100 (Tex. Civ. App.—Amarillo 1971, writ ref'd n.r.e.)	6
<i>Commissioners Court of Titus County v. Agan,</i> 940 S.W.2d 77 (Tex. 1997).....	8
<i>Dist. Judges of 188th Judicial Dist. v. County Judge and Commissioners Court for Gregg County, Tex.,</i> 657 S.W.2d 908 (Tex. App.—Texarkana 1983, writ ref'd n.r.e.).....	6, 7
<i>Ector County v. Stringer,</i> 843 S.W.2d 477 (Tex. 1992)	8, 12
<i>In re El Paso County Com'rs Court,</i> 281 S.W.3d 16 (Tex. App. – El Paso 2005, no pet.)	6, 7
<i>Lewis v. City of Fort Worth,</i> 126 Tex. 458, 89 S.W.2d 975, 978 (Tex. 1936)	12
<i>Matter of El Paso County Courthouse,</i> 765 S.W.2d 876 (Tex. App.—El Paso 1989, no writ).....	7
<i>Randall County Com'rs Court v. Sherrod,</i> 854 S.W.2d 914, 919 (Tex. App. – Amarillo 1993, no writ)	8, 13
<i>Tarrant County v. Shannon,</i> 129 Tex. 264, 104 S.W.2d 4 (Tex. 1937)	8
<i>Vondy v. Commissioners Court of Uvalde County,</i> 620 S.W.2d 104 (Tex. 1981)	6

Texas Constitution and Statutes

Tex. Const. art. V, § 8.....6

Tex. Gov't Code Ann. § 24.0207

Tex. Gov't Code Ann. § 74.4019

Identity and Interest of Amicus Curiae

The Texas Conference of Urban Counties (“Urban Counties”) is a Texas nonprofit organization composed of 38 member counties, representing approximately 80% of the population of Texas. Urban Counties serves its member counties through education endeavors and through representation before state and federal governmental entities. Urban Counties and its members have a strong interest in matters affecting the authority over the creation of county staff positions and the fiscal impact of those positions, and in the appropriate manner and means by which decisions of a county commissioners court may be reviewed by a state district court.¹

Urban Counties submits this brief because Appellee’s actions were contrary to well-established precedent regarding due process to be afforded a county commissioners court when the inherent powers of the judiciary or the supervisory jurisdiction of a district court over a county commissioners court are to be exercised. Both have been held to require notice and an opportunity to be heard. Additionally, the supervisory jurisdiction of a district court over the actions of a commissioners court is limited to an abuse of discretion standard, which was not the standard exercised by the district court in this case.

¹ The author of this brief has received no fee for its preparation.

Applicable Precedent

Texas Courts have recognized that the judicial branch possesses inherent power to require the legislative and executive branches to provide essential staffing and facilities for it to properly perform its judicial functions. *See Dist. Judges of 188th Judicial Dist. v. County Judge and Commissioners Court for Gregg County, Tex.*, 657 S.W.2d 908 (Tex. App.—Texarkana 1983, writ ref'd n.r.e.); *Vondy v. Commissioners Court of Uvalde County*, 620 S.W.2d 104 (Tex. 1981); *Commissioners Court of Lubbock County v. Martin*, 471 S.W.2d 100, 110 (Tex. Civ. App.—Amarillo 1971, writ ref'd n.r.e.). However, the inherent power to require such staffing is not unlimited. *Dist. Judges of 188th Judicial Dist.*, 657 S.W.2d at 909 (“The [inherent] power is not unlimited...especially in the area of government finances.”). It does not excuse judicial officers from the burden of showing that compelled staffing is *essential* for the holding of court, the efficient administration of justice, or the performance of a court’s constitutional and statutory duties. *See Dist. Judges of 188th Judicial Dist.*, 657 S.W.2d at 909 - 910 (where judges failed to establish the required essentiality, there was no basis for exercise of judges' inherent power to compel county judge and commissioners' court to fund increased salaries for court personnel and to implement a court administration system for the county); *See also, In re El Paso County Com'rs Court*, 281 S.W.3d 16, 28 (“[S]ound public policy considerations demand that

when the judiciary seeks to use its inherent power to overcome the legislative prerogative, it must be held to a high standard and must assume the burden of showing that the funds sought to be compelled are *essential* for the holding of court, the efficient administration of justice, or the performance of its constitutional and statutory duties.”) [Emphasis added.] The court must afford procedural due process including notice and hearing. *See Matter of El Paso County Courthouse*, 765 S.W.2d 876, 882 (Tex. App.—El Paso 1989, no writ). A court’s own administrative findings cannot be enforced unless those findings are established by a detached and objective finding of essentiality. *Dist. Judges of 188th Judicial Dist.*, 657 S.W.2d at 910.

In 2005 the El Paso Court of Appeals warned against the situation that this case presents: “the Texas judiciary, an independent branch of government, on the perilous road to potentially second-guessing every executive or administrative decision of a county commissioners court.” That Court wisely held that a district court cannot invoke its own jurisdiction to exercise supervisory control over the commissioners court under Article V, § 8, of the Texas Constitution and § 24.020, Texas Government Code. *See, In re El Paso County Commissioners Court*, 281 S.W.3d at 28. A district court’s supervisory jurisdiction over a legislative action of a commissioners court is limited to instances when the commissioners court acts beyond its jurisdiction or clearly abuses its discretion conferred upon it by law.

See, Commissioners Court of Titus County v. Agan, 940 S.W.2d 77, 80 (Tex. 1997) (“Case law defines the scope of the district court's jurisdiction. A party can invoke the district court's constitutional supervisory control over a Commissioners Court judgment only when the Commissioners Court acts beyond its jurisdiction or clearly abuses the discretion conferred upon the Commissioners Court by law.”); *Ector County v. Stringer*, 843, S.W.2d 477, 479 (Tex. 1992); *Tarrant County v. Shannon*, 129 Tex. 264, 104 S.W.2d 4, 9 (Tex. 1937) (“The appellate courts have repeatedly held that the judgments of commissioners' courts in all matters over which they are given jurisdiction by the Constitution and statutes are entitled to the same consideration as those of other courts provided for by the Constitution....It is equally well settled that the supervisory power of the district court over the judgments of a commissioners' court, as authorized by Article 5, § 8, of the Constitution, and Article 1908 of the Revised Civil Statutes, can only be invoked when it acts beyond its jurisdiction or clearly abuses the discretion conferred on it by law.”)(Citations omitted.)

This Court, therefore, must determine whether the district court applied the appropriate standard of review – that is, did the district court err in holding that Appellee would likely prevail upon final trial that the Galveston County Commissioners Court abused its discretion in setting the salary for the new Court Administrator position. *See, Randall County Com'rs Court v. Sherrod*, 854

S.W.2d 914, 919 (Tex. App. – Amarillo 1993, no writ) (Poff, J. concurring) (“This Court's task is to determine whether the district court erred in finding that upon final trial it would probably be found that the Commissioners Court abused its discretion by acting arbitrarily and capriciously.”)

Errors Below

Appellee issued ex parte, sua sponte orders in an attempt to exercise his inherent judicial power. No notice was provided to the Galveston County Commissioners Court, and no evidentiary hearing was held. Further, the sua sponte orders make no finding as to the essentiality of the ordered remedy.

Appellee then sought to enforce his void orders through a temporary restraining order and temporary injunction. These latter actions were not directed at the Galveston County Commissioners Court, but only at County Judge Mark Henry. As one of five members of the Galveston County Commissioners Court, Judge Henry lacks the authority to comply with the orders issued below. As pointed out in Appellant’s brief, neither a commissioners court nor a county can be bound by the acts of a single member of the commissioners court, including the county judge. The failure to join all members of the Galveston County Commissioners Court, as indispensable parties, deprived the trial court of subject matter jurisdiction.

The TRO granted in this matter was granted without notice to Appellant and without the opportunity for Appellant to be heard, so no due process was afforded Appellant with regard to the TRO.

The Order Granting Temporary Injunction in this case shows the Order is based on the void, ex parte, sua sponte orders of Appellee. Specifically, the Order states:

The Court finds that Petitioner Cox has shown his probable right to recover by Respondent Henry intentionally disregarding Judge Cox's September 24th order....

Even assuming the filing of this action by Appellee met the procedural requirements for invoking the district court's inherent judicial power, the Order Granting Temporary Injunction makes no finding of essentiality in the items ordered by the trial court. Perhaps this is not surprising, given that the district courts in Galveston County have continued to operate without interruption since July 24, 2014, the day Ms. Quiroga was terminated by the County. Further, there was no evidence presented to support an argument that Ms. Quiroga, as opposed to another individual, was essential to administer the courts in the county.

Senate Bill 1913

During the 2015 legislative session, the Legislature passed Senate Bill 1913. Effective September 1, 2015, § 75.401, Government Code, has been amended to permit the district or statutory county courts in a county that has more than one

district or statutory county courts, on approval of the commissioners court, to establish a court administrator system. The administrator is to be appointed by the judges of the courts served by the administrator. The administrator is entitled to reasonable compensation as determined by the judges served and in the salary range for the position as set by the commissioners court.

The trial court record reflects that several judges in Galveston County – including Judge Cox – worked with members of the Galveston County Commissioners Court to prepare a job description for a new court administrator position. That position would supervise 4 staff persons compared to the 13 positions supervised by the former Director of Justice Administration. The new position would also not have any responsibility for the county law library, the personal bond office, or the court collections programs, all activities supervised by the former Director of Justice Administration. In response to an application submitted by the district and statutory county court judges in Galveston County that included the collaboratively-developed job description, the Galveston County Commissioners Court approved the creation of a court administrator to serve those courts. The Commissioners Court set the salary range for the position, and the Commissioners Court understands that the district and statutory county judges of Galveston County get to select the individual to serve in that position. Appellee, dissatisfied with the salary range, now clings to this action as a means to keep the

old salary for a position which no longer exists (and which had far greater responsibilities than serving only as a court administrator). Appellee now has the mechanism to place Bonnie Quiroga in the position of court administrator in Galveston County, effectuating all of the demands of Appellee in this matter save for Ms. Quiroga's prior salary. Make no mistake – this matter is a salary dispute.

Trial Court Did Not Apply Proper Standard of Review

The Texas Supreme Court summarized the law applicable to a district court's review of a commissioners court's discretionary decision in *Ector County v. Stringer*, 843 S.W.2d 477, 479 (Tex. 1992):

In the area of a governing body's fiscal policy, the district court's role is necessarily a limited one: [A] court has no right to substitute its judgment and discretion for the judgment and discretion of the governing body upon whom the law visits the primary power and duty to act. Of course, if such governing body acts illegally, unreasonably, or arbitrarily, a court of competent jurisdiction may so adjudge, but there the power of the court ends. *Lewis v. City of Fort Worth*, 126 Tex. 458, 89 S.W.2d 975, 978 (Tex. 1936).

The record in this case is devoid of any evidence to establish that the Galveston County Commissioners Court abused its discretion in setting the salary of the new court administrator position. The record clearly shows the lengths to

which the Galveston County Commissioners Court went in analyzing the salary range for the new court administrator position. The Commissioners Court considered salaries paid for comparable positions in the County, market salary data, and salaries paid for comparable positions in other Texas counties, including from counties suggested by some Galveston County statutory county and district court judges. One simply cannot read the record and come to the conclusion that the Galveston County Commissioners Court acted illegally, unreasonably, or arbitrarily in setting the salary for the new court administrator position. That the salary does not satisfy the demands of Judge Cox is of no consequence in the proper application of long-established precedent to the facts at hand. There was a rational basis for the Commissioners Court to arrive at the salary it did. *See, Randall County Commissioners Court, et al. v. Sherrod*, 854 S.W.2d 914, 920 (Tex. App. – Amarillo, 1993, no writ) (“When a commissioners court has a rational basis for an act, it has not acted arbitrarily and capriciously.”) Thus, it is apparent that the trial court did not apply the appropriate standard of review in issuing the temporary injunction in this case.

Prayer

The Texas Conference of Urban Counties requests that the Court uphold long-standing precedent regarding due process necessary to invoke a court's inherent and supervisory authority and the appropriate standard of review when a district court exercises supervisory authority over the actions of a county commissioners court, vacate the temporary injunction order, and dismiss this suit.

Respectfully submitted,

/s/ John B. Dahill
John B. Dahill
State Bar No. 05310430

TEXAS CONFERENCE OF URBAN COUNTIES
500 W. 13th Street
Austin, Texas 78701
(512) 476-6174 telephone
(512) 478-5122 facsimile

Certificate of Service

I certify that a copy of this Amicus Curiae Brief in Support of Relators was served via certified mail, return receipt requested, facsimile, and/or electronically on this 26th day of October 2015, to the following:

Edward L. Friedman
efriedman@bakerlaw.com
BAKER&HOSTETLER LLP
811 Main 401, Suite 6111
Houston, Texas 77002
Telephone: (713) 751-1600
Fax: (713) 751-1717

Mark W. Stevens
markwandstev@sbcglobal.net
Attorney at Law
P.O. Box 8118
Galveston, TX 77553
(409) 765-6306 telephone
(409) 765-6469 facsimile

Attorney for Appellee

N. Terry Adams, Jr.
tadams@bmpllp.com
Joseph M. Nixon
jnixon@bmpllp.com
James E. "Trey" Trainor, III
ttrainor@bmpllp.com
BEIRNE, MAYNARD & PARSONS, L.L.P.
1300 Post Oak Blvd., Suite 2500
Houston, Texas 77056
Telephone: (713) 623-0887
Fax: (713) 960-1527

Attorneys for Appellant

/s/ John B. Dahill
John B. Dahill

Certificate of Compliance

I certify that this computer-generated Amicus Curiae Brief in Support of Relators contains 2,543 words and complies with TEX. R. APP. P. 9.4.

/s/ John B. Dahill
John B. Dahill