

NORTH CAROLINA

CHATHAM COUNTY

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 809

2019 OCT 28 A 10:12

BARBARA CLARK PUGH; GENE
TERRELL BROOKS; THOMAS HENRY
CLEGG; THE WINNIE DAVIS CHAPTER
259 OF THE UNITED DAUGHTERS OF
THE CONFEDERACY,

Plaintiff,

vs.

KAREN HOWARD; MIKE DASHER;
DIANNA HALES; JIM CRAWFORD; and
ANDY WILKIE, in their official capacities
as members of the Board of County
Commissioners of Chatham County, North
Carolina,

Defendants.

BRIEF

STATEMENT OF THE CASE

This is an action in which Plaintiffs seek a declaratory judgment pursuant to G.S. § 1-253 et. seq. for the purpose of determining a question of actual controversy between Plaintiffs and Defendants with regard to the status of the Confederate monument situated at the Chatham County Courthouse in Pittsboro, its location, and the decision of Defendants to remove the monument from its present location, as well as the applicability of Article 1 of Chapter 100 of the North Carolina General Statutes. Plaintiffs' filed their complaint, motion for temporary restraining order on October 23, 2019 and notice of hearing on October 25, 2019.

This matter is before the court upon Plaintiffs' motion for temporary restraining order, upon such conditions as the Court might deem appropriate, restraining and enjoining Defendants from taking affirmative action to remove or relocate the Confederate monument pending hearing upon Plaintiffs' request for a preliminary injunction.

STATEMENT OF FACTS

Plaintiffs' verified complaint tends to show that:

Plaintiffs are citizens and residents of Chatham County, as well as a duly qualified nonprofit association, other than one created by a trust and other than a limited liability company, consisting of two or more members joined by mutual consent for a common, nonprofit purpose, which is organized and existing under the provisions of Chapter 59B of the North Carolina General Statutes.

Plaintiff Chapter began organizing a fund raising campaign after the turn of the Twentieth Century for the purpose of raising funds necessary to designing, procuring, and installing a monument in Chatham County, North Carolina which would honor those individuals who had served in the armed forces of the Confederate States of America during the Civil War. On August 23, 1907, a monument honoring the individuals who had served in the armed forces of the Confederate States of America during the Civil War was dedicated in a public ceremony conducted at the Chatham County Courthouse in Pittsboro, North Carolina.

Upon information and belief, Plaintiffs allege and say that the monument was accepted as a gift and that its placement at the Chatham County Courthouse was specifically authorized and directed by the Chatham County Board of County Commissioners on behalf of the citizens of Chatham County, North Carolina. By such actions, the monument became the property of the county, which has maintained the monument at public expense since it was dedicated and given to

Chatham County by Plaintiff Chapter and accepted by Chatham County Board of Commissioners. As recently as 1985, the Chatham County budget included funds for the dismantling, restoration, and reinstallation of the monument at public expense. At all times pertinent to the allegations of the complaint, Chatham County has exercised dominion and control of the monument as being owned by the County. .

On August 19, 2019, the Chatham County Board of County Commissioners voted 4 to 1 to require Plaintiff Chapter to remove and relocate the monument from its present location on or before November 1, 2019. The Chatham County Board of Commissioners is on record as stating that Chatham County will remove the monument in the event that Plaintiff Chapter fails to remove and relocate the monument by said date. By such action, Defendants have asserted that Plaintiff Chapter owns the monument, which Plaintiffs specifically deny. The County Commissioners further resolved, in the event the Plaintiff Chapter refuses, fails or neglects to remove the monument, the Plaintiff Chapter would be charged with criminal trespass.

On October 21, 2019, the Chatham County Board of County Commissioners reaffirmed its decision to require Plaintiff Chapter to remove the monument. Upon information and belief, Plaintiff alleges that employees of Guy M. Turner, Inc., a heavy equipment moving company, were inspecting the Confederate monument for its removal on October 23, 2019, the day this action was filed.

DISCUSSION OF LAW

THE ENDS OF JUSTICE WILL BE SERVED BY ENTERING A TEMPORARY RESTRAINING ORDER PRESERVING THE STATUS QUO PENDING FURTHER PROCEEDINGS BECAUSE PLAINTIFFS HAVE NO ADEQUATE REMEDY AT LAW AND THE THREATENED INJURY IS IRREPARABLE.

Three facts are not in serious dispute in this litigation: (1) that the Chatham County Commissioners have decided that the Confederate monument must be removed from its location at the Chatham County Courthouse; (2) that Plaintiff Chapter has been given until November 1, 2019 to effect such a removal; and (3) that, if Plaintiff Chapter fails to remove the monument by that date, Chatham County will undertake to do so itself.

Plaintiff submit that the foregoing facts are sufficient to justify the court in applying well-established precedent and entering a temporary restraining order, upon such conditions as the Court might deem appropriate, restraining and enjoining Defendants from taking affirmative action to remove or relocate the Confederate monument pending a hearing upon Plaintiffs' request for a preliminary injunction.

A preliminary restraining order is only an ancillary remedy for the purpose of preserving the status quo or restoring a status wrongfully disturbed pending the final determination of a civil action. *E.g., Beau Rivage Homeowners Ass'n v. Billy Earl, L.L.C.*, 163 N.C. App. 325, 329, 593 S.E.2d 120, 123 (2004); *see also Hutchins v. Stanton*, 23 N.C. App. 467, 469, 209 S.E.2d 348, 349 (1974).

It is not required that a plaintiff wait until damage has been inflicted to seek a restraining order, but it is sufficient if he proves that apprehension of material and irreparable injury is well grounded upon a state of facts from which it appears that the danger is real and immediate. *Causby v. High Penn Oil Co.*, 244 N.C. 235, 93 S.E.2d 79 (1956); *Patterson v. Durham Hosiery Mills*, 214

N.C. 806, 200 S.E. 906 (1939). As the verified complaint and the affidavit of Plaintiff Pugh make clear, while Defendants have not yet undertaken to move the monument from its present location, Defendants have made their intention to do so clear and unequivocal. Indeed, there is reason to believe that preliminary steps to move the monument have been taken in retaining a heavy equipment moving company which has already inspected the Confederate monument. Such facts tend to prove that Plaintiffs' apprehension of material and irreparable injury is well grounded because it appears that the danger is real and immediate.

The core relief which Plaintiffs seek is a declaratory judgment for the purpose of determining a question of actual controversy between Plaintiffs and Defendants with regard to the status of the monument, its location, and the decision of Defendants to remove the monument from its present location, as well as the applicability of Article 1 of Chapter 100 of the North Carolina General Statutes. The remedies of a temporary restraining order and a preliminary injunction have been sought only as ancillary relief pending a judgment on the merits of their claim for a declaratory judgment. Such remedies are appropriately employed to meet an emergency when it appears that any delay would materially affect the rights of a plaintiff. *Register v. Griffin*, 6 N.C.App. 572, 575, 170 S.E.2d 520, 523 (1969). Plaintiff's complaint raises serious and legitimate questions concerning the ownership, status, and location of the monument, as well as the applicability of the Monuments Act to these facts. Therefore, it is appropriate to apply an ancillary remedy for the purpose of preserving the status quo pending the further proceedings in this action. *See R.R. v. R.R.*, 237 N.C. 88, 74 S.E.2d 430 (1952).

Plaintiff has made a sufficient showing to justify the entry of a temporary restraining order prohibiting Defendants from taking affirmative action to remove or relocate the Confederate monument pending a hearing upon Plaintiffs' request for a preliminary injunction.

public health or safety, and it has been part of the courthouse campus for more than a hundred years. It is true that a mandatory injunction would lie to compel Defendants to return the monument to its present location if Plaintiffs were to prevail; *R.R. v. R.R.*, 237 N.C. 88, 74 S.E.2d 430 (1952); *Kinston Tobacco Bd. of Trade v. Liggett & Myers Tobacco Co.*, 235 N.C. 737, 71 S.E.2d 21 (1952); however, such a process could well prove to be needless and wasteful if Plaintiffs' position were to be sustained.

B. *Plaintiffs' threatened injury is irreparable.*

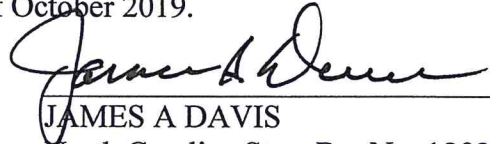
The threatened actions of Defendants will cause an ongoing injury to Plaintiffs during the pendency of this litigation because the monument will be removed from its present location without action by the court. An irreparable injury is not an injury which is beyond the possibility of repair or possible monetary compensation but is such a continuous and recurring injury that no reasonable redress is afforded at law, and it is one to which the complainant in equity and good conscience should not be required to submit. *E.g.*, *Hooks v. International Speedways, Inc.*, 263 N.C. 686, 140 S.E.2d 387 (1965). It is appropriate to preserve the status quo and to restrain a defendant from acting in a manner which would tend to render judgment in the pending action ineffectual. *E.g.*, *Southern Ry. Co. v. City of Greensboro*, 247 N.C. 321, 101 S.E.2d 347 (1957).

CONCLUSION

Based on the foregoing discussion of law, Plaintiffs respectfully submit that the court should enter a temporary restraining order prohibiting Defendants from taking affirmative action to

remove or relocate the Confederate monument pending a hearing upon Plaintiffs' request for a preliminary injunction.

Respectfully submitted, this 27th day of October 2019.



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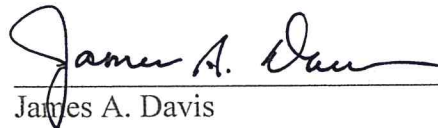
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served the foregoing document in the above-entitled action upon all party(ies) by:

- ☐ Depositing a copy in the United States mail in a properly addressed, postpaid envelope.
- ☒ Hand Delivery
- ☐ Fax Transmittal

This the 28th day of October, 2019



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FILED
2019 OCT 28 A 10:15
CLERK OF COURT, C.S.C.
BY JW