

NORTH CAROLINA

CHATHAM COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

2019 NOV 12 P 4:28

19 CVS 809

BARBARA CLARK PUGH; GENE CHATHAM CO., C.S.C.

TERRELL BROOKS; THOMAS HENRY )

CLEGG; THE WINNIE DAVIS CHAPTER ) *HCB*

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. )

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**BRIEF**

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**STATEMENT OF THE CASE**

This is an action in which Plaintiffs seek a declaratory judgment concerning the 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, and notice of hearing on October 24, 2019.

The matter came on for hearing on October 29, 2019 before the Honorable Charles M. Viser, who entered a temporary restraining order restraining and enjoining Defendants from taking affirmative action to remove or relocate the Confederate monument pending a hearing on November 8, 2019 at which time the court would take up the issue of the propriety of a preliminary injunction.

In his order, Judge Viser found as a fact that Defendants had instructed the Chatham County Manager that the Confederate Monument would be considered a public trespass on November 1, 2019 in the event that Plaintiff Chapter failed to submit a plan to remove it was received by the county manager's office by October 1, 2019. Judge Viser went on to conclude that "a risk of immediate and irreparable harm exist(s) to the rest of this action of which there is no adequate remedy at law exists."

Plaintiffs subsequently filed a motion for preliminary injunction, 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 further hearing of this action.

The West Chatham branch of the National Association for the Advancement of Colored People and a group calling itself Chatham for All have filed joint motion to intervene in this action. Movants have alleged a right to intervene in this proceeding, as well as justification for permissive intervention.

### **STATEMENT OF FACTS**

Plaintiffs' verified complaint and their affidavits tend 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.

After the monument was installed, it was vandalized; and the Chatham County Board of Commissioners authorized the payment of a reward for the arrest and conviction of those responsible for the crime. In addition, the Board resolved to prosecute vigorously those responsible for the damage.

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 refused, failed or neglected to remove the monument, 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**

##### **MOVANTS' MOTION TO INTERVENE IS NOT WELL-FOUNDED, AND IT SHOULD BE DENIED.**

Three facts are not in serious dispute in this litigation: (1) that the Chatham County Commissioners decided that the Confederate monument must be removed from its location at the Chatham County Courthouse; (2) that Plaintiff Chapter was been given until November 1, 2019 to effect such a removal; and (3) that, if Plaintiff Chapter failed to remove the monument by that date, Chatham County would undertake to do so itself. All issues of fact and of law to be argued in this action turn upon the foregoing three uncontested facts, as well as the unresolved question concerning the ownership of the monument itself.

Plaintiffs contend that all material issues in this proceeding are subject to litigation between themselves and Defendants in a reasoned and procedurally structured course of argument and presentation of evidence. It is neither necessary nor desirable that this matter become anything other

than a civil action between parties who have direct and substantial interests in its outcome which are cognizable by the court as a justiciable controversy.

**A. Movants cannot establish a right to intervene in this action.**

Rule 24(a) of the Rules of Civil Procedure provides:

Upon timely application anyone shall be permitted to intervene in an action:

- (1) When a statute confers an unconditional right to intervene; or
- (2) When the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

*See generally* 1 G. Wilson, *North Carolina Civil Procedure* § 24-3 (3d ed. 2007 & Cum. Supp. 2019).

Movants have failed to allege and prove that any statute gives them a right to intervene in this action. Therefore, subparagraph (2) of subsection (a) of Rule 24 governs whether Movants have a right to intervene in this proceeding. To do so, they must first satisfy three conditions which are necessary predicates to such intervention: (1) that they have an interest relating to the property or the transaction involved in this action; (2) that there is a practical impairment of their ability to protect such interest; and (3) that their interests will be inadequately represented by existing parties.

*E.g., Procter v. City of Raleigh Bd. of Adjustment*, 133 N.C.App. 181, 514 S.E.2d 745 (1999).

**1. *Plaintiffs do not have a cognizable interest in the subject of this litigation.***

While Plaintiffs concede that Movants have a political interest in the present litigation, they cannot show that they have any interest in the litigation which amounts to a justiciable dispute with either Plaintiffs or Defendants. While Movants successfully mobilized their resources and became active in pressing their demands for the removal of the Confederate Monument before the Chatham

County Board of Commissioners, that course of conduct does not give them such an interest in the outcome of this litigation which will sufficient to give them a concrete stake or interest in its outcome. A mere political interest or perspective in the subject matter of litigation is insufficient to justify allowing Movants to intervene in this proceeding. Instead, the rule requires that a movant have a direct personal or pecuniary interest in the subject of the litigation. *Koenig v. Town of Kure Beach*, 178 N.C.App. 500, 631 S.E.2d 884 (2006). Indeed, Movants have neither been injured or have been threatened with injury by anything connected with the present action. *Bruggeman v. Meditrust Co., LLC*, 165 N.C.App. 790, 600 S.E.2d 507 (2004).

**2. *There is no practical impairment of Movants' ability to protect their interests.***

Given that Movants cannot establish that they have been injured or that they have been threatened with injury by anything connected with the present litigation, it necessarily follows that there is no practical impairment of their ability to protect their interests. In fact, Movants interests in this matter lie in the political sphere and they have been able to place their political interests at the forefront of the course of conduct which has lead to this litigation being filed in the first place. Defendants, responding to political pressure brought by Movants and their allies, made a political decision to take action to remove the Confederate Monument. Whether that action was wise or informed is not before this court; what is before this court is whether Defendants had the authority to take such action in the first place and to ignore the arguable applicability of the Monuments Act.

**3. *Even if Movants have cognizable interests in this litigation, which Plaintiffs deny, their interests will be adequately represented by existing parties.***

A movant, in spite of having some interest in the subject matter of the action, will not be permitted to intervene as a matter of right if the movant's interest is adequately represented by parties



already in the action.. What constitutes adequate representation should be determined on a practical, rather than legal, basis, since the rule deals with the movant's practical need to protect an interest. *State ex rel. Long v. Interstate Cas. Ins. Co.*, 106 N.C. App. 470, 417 S.E.2d 296 (1992) What constitutes adequate representation rests in the discretion of the trial court. *Perry v. Union Camp Corp.*, 100 N.C. App. 168, 394 S.E.2d 681 (1990).

Plaintiffs have already established that Movants do not have a cognizable interest in this proceeding which is sufficient to warrant intervention. Assuming *arguendo* that they do have such an interest, they still cannot establish that their interests in this litigation will not be adequately represented by Defendants. After all, Defendants, on behalf of Chatham County, made a policy decision to remove the Confederate Monument from its present location at the Historic Chatham County Courthouse. As a result of that decision, Plaintiffs filed the present action contending that the decision of Defendants exceeded their authority and that matters touching upon the monument are subject to application of the provisions of the Monuments Act. Defendants have retained competent and capable counsel to represent them in this proceeding, and Defendants have vigorously asserted an array of defenses which challenge the right of Plaintiffs to any favorable outcome. Therefore, one cannot argue seriously that Defendants are incapable or unwilling to conduct this litigation in a manner which adequately represents whatever tangential or political interests Movants might have in this proceeding.

**B. Movants have no basis for permissive intervention in this action.**

Rule 24(b)(2) establishes permissive intervention without regard to other statutory rights by providing in part that intervention may be allowed “[w]hen an applicant's claim or defense and the main action have a question of law or fact in common.”

While the applicant for intervention under Rule 24(b)(2) need not show a direct and personal interest in the subject of the litigation, *In re Gertzman*, 115 N.C. App. 634, 446 S.E.2d 130 (1994); *Matter of Baby Boy Searce*, 81 N.C. App. 531, 345 S.E.2d 404 (1986); it is necessary that he present a claim or defense in common with a question of law or fact in the main action.

A private third party may be permitted to intervene under Rule 24(b), but only “(1) When a statute confers a conditional right to intervene; or (2) When an applicant's claim or defense and the main action have a question of law or fact in common.” *Virmani v. Presbyterian Health Services Corp.*, 350 N.C. 449, 515 S.E.2d 675 (1999). Subject to these limitations, permissive intervention by a private party under Rule 24(b) rests within the sound discretion of the trial court and will not be disturbed on appeal unless there was an abuse of discretion. *See State ex rel. Comm'r. of Ins. v. N.C. Rate Bureau*, 300 N.C. 460, 468, 269 S.E.2d 538, 543 (1980).

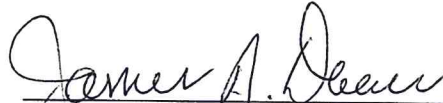
There are no common questions of fact or law shared by Movants with any other party to this action. Movants have utterly failed to show that they have a direct and personal interest in this action; at most, Movants have a political interest in the outcome of this action, but that interest is insufficient by itself to justify allowing them to participate as parties before the bar. Movants are merely attempting to bring the sound and fury of their political convictions into what would otherwise be a dignified and reasoned judicial resolution of a justiciable controversy between Plaintiffs and Defendants. This process need not be convoluted nor confounded by those who merely seek to prolong their political rhetoric.

### CONCLUSION

Based on the foregoing discussion of law, Plaintiffs respectfully submit that the court should deny Movants' motion to intervene in this action.

Respectfully submitted, this 17<sup>th</sup> day of November 2019.





JAMES A DAVIS

North Carolina State Bar No. 12921

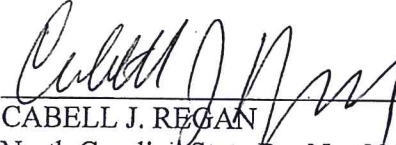
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