

FILED

NORTH CAROLINA
COUNTY OF CHATHAM 2019 NOV - 1 P 2:21

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

CHATHAM CO., C.S.C.

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

Plaintiffs,

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.

**TEMPORARY RESTRAINING
ORDER**

THIS MATTER COMING ON FOR HEARING AND HAVING BEEN HEARD upon Plaintiffs' Motion for Temporary Restraining Order pursuant to Rule 65 of the North Carolina Rules of Civil Procedure before the Honorable Casey Viser, Superior Court Judge presiding over the October 28, 2019 Session of the Chatham County Superior Court. Appearing before the Court were: Counsel for Plaintiffs, James A. Davis of Winston-Salem, North Carolina, and Cabell J. Regan, of Pittsboro, North Carolina; and Counsel for Defendants, J. Nicholas Ellis, and Dylan J. Castellino of Rocky Mount, North Carolina. Based upon the Verified Complaint and Motion for Temporary Restraining Order, as well as the Affidavits and briefs submitted by the parties, along with the arguments of Counsel, the Court finds, pursuant to Rule 65(d) of the North Carolina Rules of Civil Procedure, and concludes as follows:

FINDINGS OF FACT

1. Plaintiffs Barbara Clark Pugh, Gene Terrell Brooks, and Thomas Henry Clegg are residents and citizens of the County of Chatham, North Carolina.
2. Plaintiff Winnie Davis Chapter 259 of the United Daughters of the Confederacy (hereinafter referred to as "Plaintiff Chapter") is a 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.

3. The County of Chatham is a body politic created and existing under the Constitution of the State of North Carolina and the provisions of Chapter 153A of the North Carolina General Statutes.

4. Defendants Karen Howard, Mike Dasher, Dianna Hales, Jim Crawford and Andy Willkie are the duly elected members of the Board of County Commissioners for the County of Chatham, North Carolina (hereinafter collectively referred to as "Defendants," or the "Board").

5. A monument honoring the individuals who had served in the armed forces of the Confederate States of America during the Civil War rests upon the premises of the Historic Chatham County Courthouse located at 9 East Street, Pittsboro, North Carolina 27312 (hereinafter "the Monument").

6. This Court has jurisdiction over the parties and subject matter of this action, and this matter is properly before the Court.

7. The Monument is an "object of remembrance," as defined by North Carolina General Statute § 100-2.1.

8. The Monument was placed upon the property of the Historic Chatham County Courthouse in 1907. The Monument has remained there continuously since its erection in 1907, with the exception of a period of time in 1985 during which the County of Chatham expended funds to dismantle, temporarily remove, and restore the Monument while a road construction project was underway around the premises of the Historic Chatham County Courthouse located at 9 East Street, Pittsboro, North Carolina.

9. After completion of the construction project, the County of Chatham reinstalled the Monument to the same location, where it remains today.

10. Plaintiffs affirmatively allege that the Monument is owned by the County of Chatham, and that the County of Chatham has kept and maintained the Monument for over a century.

11. Defendants, however, affirmatively allege that the Monument is owned by the Plaintiff Chapter, and is in its current location pursuant to a resolution of the Board of Commissioners of Chatham County, North Carolina on or about July 8, 1907.

12. Defendants contend that this resolution, a copy of which is attached to the Affidavit of Defendant Mike Dasher, is merely a license (hereinafter the "Monument license").

13. It is undisputed that the Monument is located on public property.

14. On August 19, 2019, a motion was made by Commissioner Crawford, seconded by Commissioner Howard, and passed by a vote of 4-1 of the Board, to terminate "the Monument license" granting the Plaintiff Chapter's right to maintain and keep their monument within the Historic Courthouse circle. The Board directed Plaintiff Chapter to communicate in writing to the county manager their plan for the final disposition of the monument, including both the statue and its pedestal. The Board further directed the county manager to make a good faith effort to assist in the implementation of the Plaintiff Chapter's plan, according the Monument and its custodians their due respect, and, if no such plan was received by the county manager's office by October 1, 2019, the Monument would be considered a public trespass on November 1, 2019.

15. Further, on October 21, 2019, the Defendants passed a resolution directing the employees of Chatham County to remove the Monument on November 1, 2019.

16. On October 23, 2019, Plaintiffs commenced a civil action against Defendants seeking a Declaratory Judgment, and included a Motion for Temporary Restraining Order seeking to enjoin Defendants from removing the Monument from its current location, and from initiating criminal process against Plaintiff Chapter for public trespass related to the Monument.

17. North Carolina General Statute § 100-2.1 applies in this action, and therefore at this stage of the proceedings Plaintiffs have satisfied the burden of showing a likelihood of success on the merits of their claims.

18. The Court -- after engaging in a balancing process of weighing potential harm to the Plaintiffs if the Temporary Restraining Order is not issued, against the potential harm to the Defendants if such relief is granted -- determines that the balance of the equities weighs in favor of granting a Temporary Restraining Order.

19. Furthermore, in the absence of a restraining order, the injury that Plaintiffs would suffer, in addition to being one for which Plaintiffs would have no adequate remedy at law, is one to which they should not be required to submit and which Defendants should not be permitted to inflict.

20. In any event, a bond in the amount of Six Thousand and 0/100 Dollars (\$6,000.00) is adequate to protect Defendants' interests, pursuant to Rule 65(c) of the North Carolina Rules of Civil Procedure.

CONCLUSIONS OF LAW

1. This Court has the power, jurisdiction, and legal authority to grant this Temporary Restraining Order.

2. The Court has jurisdiction over the subject matter of this action pursuant to the provisions of N.C.G.S. §1-75.1 et seq., and venue is proper in Chatham County pursuant to N.C.G.S. §1-76 et seq.

3. A substantial risk of immediate and irreparable harm to the Plaintiffs exists, for which there is no adequate remedy at law, based upon the following:

- a. The Plaintiffs have adequately alleged, and the Court has found, that the County's actions and threatened actions as set forth above are proscribed by N.C.G.S. § 100-2.1.
- b. If Defendants were to initiate against any of Plaintiffs charges of "criminal trespass," it would result in an unfounded criminal liability if the Plaintiffs are ultimately successful in this litigation, and Plaintiffs would have no adequate remedy at law to redress such an injury.
- c. If Defendants were to precipitously remove the Monument, there is no adequate remedy at law for Plaintiffs should it be later determined that its removal was proscribed by law.

4. Issuance of this Order is necessary and appropriate to maintain the *status quo* until at least such time as a hearing may be held to determine if a Preliminary or Permanent Injunction should issue.

5. A hearing on Plaintiffs' Motion for Preliminary Injunction shall be timely heard pursuant Rule 65 of the North Carolina Rules of Civil Procedure, on or before November 8, 2019, unless agreed to by the parties and approved by the Court.

6. Pursuant to Rule 65(c) of the North Carolina Rules of Civil Procedure, Plaintiff shall deposit with the Chatham County Clerk of Court a bond in the amount of Six Thousand and 0/100 Dollars (\$6,000.00).

Therefore, **IT IS HEREBY ORDERED, DECLARED AND DECREED** as follows:

1. That the Plaintiffs' Motion for Temporary Restraining Order is **GRANTED**;

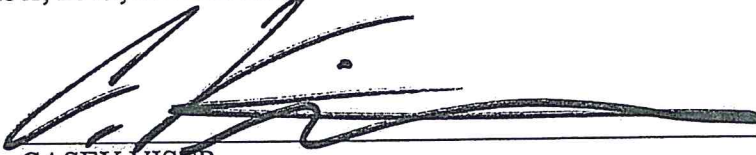
2. That Defendants, the employees, agents, and/or servants of the County of Chatham as well as upon those persons in active concert or participation with them are restrained from dismantling, removing, destroying and/or disturbing in any manner or fashion the Monument located on the grounds of the Historic Chatham County Courthouse located at 9 East Street, Pittsboro, North Carolina 27312; and from taking any action to charge Plaintiffs with criminal trespass related to the Monument's current situs while this Order remains in effect;

3. That Plaintiffs shall post a bond in the amount of Six Thousand and 0/100 Dollars (\$6,000.00), on or before 5:00 p.m. on November 1, 2019; provided, however, that in the event Plaintiffs are unable to post such bond with the Clerk of Court by the deadline set forth herein due to any delay in the entry of this Order, Plaintiffs' counsel shall, by the same deadline, provide notice to the Court that such bond is and will be held in trust until it can be posted with the Clerk of Court;

4. That this Order will expire on November 8, 2018 at 5 p.m., unless before that time, for good cause shown, it is extended for a like period or unless the Parties consent that it may be extended for a longer period, in which case the reasons for the extension shall be entered of record, or unless Plaintiffs fail to comply with the directive of the 3rd Paragraph of this Order, in which case this Order shall expire as of 5 p.m. on November 1, 2019.

5. This Court retains jurisdiction of this matter for purposes of entering any further Orders which may be necessary to effect this Order.

This the 1ST day of November, 2019, at 11:55 a.m.


CASEY VISER
SUPERIOR COURT JUDGE PRESIDING