

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS

George M. Hood,)
)
Plaintiff,)
)
vs.)
)
Jasper County,)
)
Defendant.)

C.A. No. 2013-CP-27-00322

ORDER

RECEIVED

FEB 19 2015

SC Court of Appeals

2015 JAN 30 AM 9:19
MAJORITY POSITION
CLERK OF COURT
JASPER COUNTY SC

This non-jury declaratory judgment action came before the Court for trial on December 1, 2014 in Beaufort, South Carolina by consent and agreement of the parties. Prior to starting the trial, the parties agreed to disposition on stipulated facts, which the parties submitted on December 31, 2014. For the reasons set forth below, the Court finds and concludes that Jasper County Council lawfully abolished Plaintiff's position. Therefore, Plaintiff is not entitled to the declaratory judgment he seeks.

INTRODUCTION

Because the parties have stipulated to the facts, a lengthy recitation of findings of fact is not needed. Plaintiff is the former deputy county administrator for Jasper County. (Facts ¶¶ 9, 20)¹ Jasper County operates under the council-administrator form of government. (Facts ¶3) Council voted in June 2011 to approve a budget that included funding for a deputy county administrator position in its Fiscal Year ("FY") 2011-2012 budget. (Facts ¶4) Both public opinion and Council were divided over whether the position should have been included in the

¹ The parties' Stipulated Facts are referred to as (Facts ¶ ____). While only some of the stipulated facts are recounted in this order, the Court has considered all of the facts stipulated by the parties.

budget, and the budget passed by a 3-to-2 vote. (Facts ¶ 7) Council elections were held in June 2012. (Facts ¶11) As a result of the elections, two new councilmembers were seated who had not voted on the budget to include the deputy county administrator position. (Facts ¶¶ 7, 11) Councilmembers Blackshear and Gregory were replaced by councilmembers Clark and Johnson and were seated in January 2013. (Facts ¶11)

After the new councilmembers were seated in January 2013, Council passed an ordinance amending its FY 2012-2013 budget to remove funding for and eliminate the deputy county administrator position. (Facts ¶12) The ordinance reads in relevant part:

BE IT ORDAINED by the Jasper County Council in council duly assembled and by the authority of the same:

1. The FY 2012-2013 Budget of Jasper County is hereby amended so as to reduce from Department 051 – Administration – all funding for salary and wages, FICA – Employer, SC Retirement, Medical, for the position of Deputy County Administrator not committed for services provided through the effective date hereof; provided however, nothing herein shall be construed so as to prohibit the Finance Director from disbursing sums authorized to be disbursed pursuant to Section 14 of the Jasper County Personnel Policies and Procedures Manual for the position of Deputy County Administrator.
2. It is hereby ordered that the job description of the Deputy County Administrator shall be and it is stricken [sic] from the approved list of job descriptions for Jasper County.

(Ex. 4) The ordinance was approved on January 28, 2013, by a vote of 4 to 1, with Councilmembers Etheridge, Sauls, Clark and Johnson voting for, and Councilmember Drayton voting against. (Facts ¶13) Following Council's vote, the County Administrator notified Plaintiff that his employment was terminated. (Facts ¶ 20)

ANALYSIS AND CONCLUSIONS OF LAW

Plaintiff's Amended Complaint asked the Court to determine whether Jasper County had the authority to abolish the deputy county administrator position. Plaintiff alleges Jasper County Council's actions unlawfully usurped the county administrator's duties and that Council's decision violated the separation of powers doctrine. Defendant County responds that Council acted within the statutory authority vested in it by the General Assembly and in accordance with the South Carolina Constitution. After considering both parties' arguments and the Stipulated Facts, the Court concludes Jasper County had authority to abolish the deputy county administrator position.

The South Carolina Constitution provides: "[t]he General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties ... Alternate forms of government, not to exceed five, shall be established." S.C. Const. Art. VIII, § 7. The Constitution further specifies that "laws concerning local government shall be liberally construed in their favor. Powers ... granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution." S.C. Const. Art. VIII, § 17. In accordance with the constitutional provisions of Article VIII, the General Assembly passed what is known as the "Home Rule Act" in 1976. The General Assembly established five forms of county government, including the council-administrator form, which Jasper County uses. S.C. Code § 4-9-20. The Home Rule Act carries out the Constitution's intent that local governments have plenary power over local affairs by providing that counties "have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State." S.C. Code § 4-9-25.

Under home rule, all county governing bodies regardless of form (except for a board of commissioners) are empowered to carry out certain duties. S.C. Code § 4-9-30. As is relevant here, § 4-9-30 gives county governing bodies the authority “to *establish such ... positions* in the county as may be necessary and proper to provide services of local concern for public purposes, to *prescribe the functions* thereof and to regulate, modify, merge or *abolish any such ... positions*, except as otherwise provided for in this title.” S.C. Code 4-9-30(6) (emphasis added). Jasper County, having a council-administrator form of government, is also subject to Article 7 of the Act, dealing specifically with that form. S.C. Code §§ 4-9-610, *et seq.* Important to the matter at bar is S.C. Code § 4-9-630 (8), which delegates to the county administrator the responsibility of “employment and discharge of personnel ... subject to the appropriation of funds by the council for that purpose.”

It is the interplay between these two statutes that forms the heart of this dispute. Plaintiff asserts that the action abolishing his position is void for two reasons. First, he claims that the more specific statute pertaining to county-administrator forms of government (*i.e.*, § 4-9-630(8)) controls over the more general statute empowering counties to establish and abolish positions (*i.e.*, § 4-9-30(6)). Second, Plaintiff claims that allowing Council to abolish the deputy county administrator position violates the doctrine of separation of powers that is part of our state’s constitution. *See* S.C. Const. Art. I, § 8. Defendant asserts that, when read in harmony, each of these provisions leads to the conclusion that council establishes, funds and abolishes positions, and the county administrator appoints and discharges the employees who fill those positions.

1. The requirement of separation of powers is not violated by Council’s elimination of Plaintiff’s position.

The Court first addresses Plaintiff’s argument that Council’s actions violate the state constitution’s requirement of separation of powers. Plaintiff claims that since abolishing his

position had the effect of terminating his employment, which by law is delegated to the administrator, Council violated the doctrine of separation of powers. This is not the case. The South Carolina Supreme Court held long ago that the doctrine applies to state, not local government. In *Gaud v. Walker*, 214 S.C. 451, 477, 53 S.E.2d 316, 328 (1949), a taxpayer brought a challenge to legislation that allowed the voters of Charleston County to select among two plans for county government, called “Plan A” and “Plan B.” Among the challenges was that the proposed plans would combine executive and legislative functions into one governing body. The Supreme Court rejected this argument and held:

It is next contended that Plan A conflicts with Article 1, Section 14 of the Constitution, in that it seeks to combine in the County Council both legislative and executive functions. It has been held that this section of the Constitution refers to the government of the State and to State officers, and not to the government of municipal corporations.

Id.

Further undermining Plaintiff’s position is the fact that the constitution specifically authorizes the legislature to provide for the county government in this state. S.C. Const Art. VIII, § 7. The legislature did that by way of the Home Rule Act. S.C. Code § 4-9-10, *et seq.*; *see also*, *Williams v. Town of Hilton Head Island*, 311 S.C. 417, 422, 429 S.E.2d 802, 805 (1993) (“[B]y enacting the Home Rule Act, . . . , the legislature intended to . . . restore autonomy to local government.”).² In fact, in one form of county government, the council form, the General Assembly explicitly combined the legislative and executive duties in the county council. S.C. Code §§ 4-9-20, 4-9-310.

² *Williams* dealt with the analogous provisions of the Home Rule Act that apply to cities and towns.

Because separation of powers is not implicated by local government structure and because the constitution authorized the General Assembly to provide for the design of county governments, there is no constitutional violation. Having determined the constitutional issue, the Court now turns to the statutory issue.

2. County Council had authority to abolish the deputy county administrator position under S.C. Code § 4-9-630(8).

Plaintiff alleges that the county administrator's powers of appointment and discharge were usurped when County Council abolished the deputy county administrator position. Defendant, however, asserts that the county administrator and Council both acted within their authority. The Court agrees.

This is essentially a matter of statutory construction. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Lambries v. Saluda County Council*, 409 S.C. 1, 10, 760 S.E.2d 785, 789 (2014). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.*, at 10-11, 760 S.E.2d at 790. However, if the statute is ambiguous, "the court must construe its terms." *Id.* at 10, 760 S.E.2d at 789. "Further, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." *Ranucci v. Crain*, 409 S.C. 493, 500, 763 S.E.2d 189, 192 (2014).

The Court concludes that the provisions of Title 4, Chapter 9 of the S.C. Code are plain and unambiguous in their application. By its own terms, Chapter 9 provides that County Council has authority to "establish . . . positions in the county . . . and to abolish any such . . . positions." S.C. Code § 4-9-30(6). This is what Council did when it passed the ordinance to strip funding for and eliminate the deputy county administrator position. Likewise, Chapter 9 also provides that,

in county-administrator governments like Jasper County's, the administrator is "responsible for employment and discharge of personnel . . . subject to the appropriation of funds by the council for that purpose." S.C. Code § 4-9-630(8). The county administrator carried out his authority when he terminated Plaintiff's employment following Council's vote to eliminate the position. Had the administrator continued to employ Plaintiff, it would have violated § 4-9-630(8)'s requirement that funds be appropriated by council for that purpose since Council had stripped funding for the position.

Plaintiff makes much of the county administrator's statement in response to his request for a grievance that, "The decision to eliminate the position of Deputy County Administrator was made by Jasper County Council and not by me." (Facts ¶ 22) Plaintiff appears to contend this means that the county administrator did not terminate Plaintiff's employment. This goes too far. The administrator's statement is nothing more than a statement of what happened: Council eliminated Plaintiff's position. It does not change the fact that, following the elimination, the county administrator terminated Plaintiff's employment.

Plaintiff also asserts that the reference in § 4-9-30(6) to the "positions" that council may "establish" and "abolish" refers only to those positions directly under council's control. Assuming that the word "positions" created an ambiguity and, thus, a need for statutory construction, Plaintiff's reading would auger conflict in the home rule statutes. There are very few "positions" that are subject to appointment and discharge by council in the county-administrator form of government – the county administrator and clerk to council being the primary two.³ Both positions, however, are created by statute – not by Council – and must be

³ The Council also appoints the register of deeds in Jasper County. S.C. Code § 30-5-12(A). Like the administrator and clerk to council, however, the Council is required to appoint a register of deeds. *Id.* ("The governing bodies of . . . Jasper . . . count[y] shall appoint the register of deeds

filled. S.C. Code § 4-9-110 (“The council *shall* appoint a clerk to record its proceedings . . .”) (emphasis added); S.C. Code § 4-9-620 (“The council *shall* employ an administrator . . .”) (emphasis added). Because both positions are created by statute and because Council is required by statute to fill them, these cannot be among the “positions” Council is authorized to “establish” or “abolish” under § 4-9-30(6). Because there are no other positions over which Council has appointment and discharge authority, Plaintiff’s reading would render the grant of authority to create and abolish positions in § 4-9-30(6) meaningless. Courts will apply an interpretation that gives effect to all parts of a statute rather than one that does not. *Nucor Steel v. S.C. Pub. Serv. Comm’n*, 310 S.C. 539, 545, 426 S.E.2d 319, 323 (1992) (“The well-settled rule in South Carolina is that, where possible, all provisions of a statute must be given full force and effect.”).

Plaintiff also contends that the reference to “positions” means only that Council can establish and abolish services, such as water, public utilities or the like. Again, the problem with Plaintiff’s reading is that it renders the word “position” meaningless. If the legislature intended Council’s authority to create and abolish to be limited to broad categories of services to be provided, it could have said so. *Anderson v. S.C. Elec. Com’n*, 397 S.C. 551, 556, 725 S.E.2d 704, 707 (2012) (“Unless there is something in the statute requiring a different interpretation, the words used in the statute must be given their ordinary meaning.”). By contrast, reading the statutes together to provide that Council establishes, funds and abolishes positions and that the county administrator employs and discharges the individuals filling the positions gives meaning to all provisions of the statute. *Id.* (“In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect.”).

for its county . . .”) Since the position is created by the legislature and Council is required to fill it, it is clear that Council could not abolish that position.

Plaintiff argues as an additional ground that, because the County was not experiencing a budget shortfall, it was improper for the Council to eliminate the deputy county administrator position mid-way through the budget year. Plaintiff further claims that, if there had been a shortfall, a reduction in force should have been undertaken by the administrator. Initially the Court notes that nothing in Chapter 9 or any of the Home Rule Act limits Council's authority to abolish a position to budget shortfalls. Essentially, Plaintiff questions the wisdom of council's decision, calling it an "illusory and ineffective" way to save the county money. (Plf. Pre-Trial Br. p. 4) The Court may not review questions that attack the wisdom of Council's policies. *S.C. Pub. Interest Found. v. Jud. Merit Selection Com'n*, 369 S.C. 139, 143, 632 S.E.2d 277, 278 (2006) ("[T]he courts will not rule upon questions which are exclusively or predominately political in nature rather than judicial.") (citing *Chicago & S. Air Lines v. Waterman S.S. Corp. Civil Aeronautics Brd.*, 333 U.S. 103, 111, 68 S.Ct. 431, 92 (1948)); *see also*, *Japan Whaling Ass'n v. Am. Cetacean Soc.*, 478 U.S. 221, 230, 106 S.Ct. 2860, 2866 (1986) ("The political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of another branch of government."). Accordingly, the Court declines to sit in judgment of the wisdom of Council's decision.

3. Even if Plaintiff were correct, his employment was terminable at-will.

In his Amended Complaint, Plaintiff requested that the Court determine that his discharge was unlawful and, among other things, grant him reinstatement. (Amnd Compl ¶ 30) However, Plaintiff did not plead that he was other than an at-will employee. *Barron v. Labor Finders of S.C.*, 393 S.C. 609, 614, 713 S.E.2d 634, 636 (2011) ("In South Carolina, employment at-will is presumed absent the creation of a specific contract of employment."). "An at-will employee may

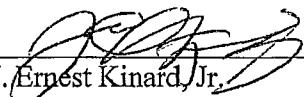
be terminated at any time for any reason, with or without cause.” *Id.* “The doctrine in its pure form allows an employer to discharge an employee without incurring liability for good reason, no reason, or bad reason.” *Culler v. Blue Ridge Elec. Co-op., Inc.*, 309 S.C. 243, 245, 422 S.E.2d 91, 92 (1992).

Accordingly, even if the Court believed that Council’s ordinance was unlawful and did not require the county administrator to terminate Plaintiff’s employment, it does not matter because the administrator did so anyway. Because Plaintiff’s employment could be terminated for any or no reason, he is not entitled to reinstatement simply because the administrator was mistaken about the need to terminate his employment. *See Bookman v. Shakespeare Co.*, 314 S.C. 146, 442 S.E.2d 183 (Ct. App. 1994) (rejecting claim that employer’s improper investigation led to his termination and explaining “[h]ad the employer conducted the investigation and determined the altercation resulted from the [coworker’s] harassment, [the employer] was nevertheless free to fire Bookman for any reason or no reason.”). For this additional reason, Plaintiff is not entitled to a declaratory judgment in his favor.

CONCLUSION

As set forth in this Order, the Court finds the elimination of Plaintiff’s position lawful and that Plaintiff is not entitled to a declaratory judgment in his favor. It is therefore ORDERED that judgment be entered in favor of Defendant.

AND IT IS SO ORDERED.



J. Ernest Kinard, Jr.
Presiding Judge

Dated: 1/16/15
Camden, South Carolina

RECEIVED
 FEB 19 2015
 SC Court of Appeals

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF JASPER COUNTY
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-27-00322

George M. Hood

Jasper County

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Michael C. Greene

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : Judgment for Defendant Jasper County

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


 Circuit Court Judge

017
 Judge Code

1/26/15
 Date

