

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA**

**PAM CHILDERS, Clerk of the Circuit Court
and Comptroller for Escambia County,**

Plaintiff,

v.

Case No. 2022-CA-0409

**ESCAMBIA COUNTY, and STEVEN BARRY,
LUMON MAY, and ROBERT BENDER,**

Defendants.

ORDER GRANTING MOTION TO DISMISS

THIS CAUSE is before the Court on Defendants' Motion to Dismiss the Clerk's Complaint, filed on April 14, 2022, pursuant to Florida Rule of Civil Procedure 1.140(b)(1), (6), in which the Plaintiff ("Clerk") seeks declaratory and injunctive relief. On June 13, 2022, the Clerk filed a response to the motion to dismiss. On June 15, 2022, Defendants filed a reply in support of the motion to dismiss. On June 17, 2022, the Court held a hearing on the motion to dismiss. Having reviewed and considered the motion and the subsequent filings of the parties, record, arguments of the parties, and the applicable law, the Court finds as follows:

The Motion to Dismiss

The motion to dismiss begins with the assertion that "this suit is almost wholly duplicative of the case the County already filed against the Clerk, Case No. 2022-CA-141." For that reason, as well as others, the Defendants request dismissal.

The Clerk's Complaint

The Clerk asserts that in 1997, Escambia County contracted with the International City Management Association Retirement Corporation (“ICMA”) to oversee a local retirement plan established by Escambia County in 1994. The Clerk asserts that she is auditor of County funds and is required by law to refuse to sign a county warrant for an unlawful payment. The Clerk asserts that contribution of public funds to the retirement plan for the benefit of elected county officers is unlawful, and that in January 2022, she “ceased all contribution of public dollars” to the retirement plan as to Commissioners Barry, May, and Bender, the “only elected county officers who participate” in the plan.

The Clerk states that in “a separate action, the County has petitioned this Court for a writ of mandamus asking the Court find that the Clerk has no discretion but to continue to participate in a process whereby she, as the custodian of the public funds, disburses funds from the public treasury to the private retirement accounts of Barry, May, and Bender.”

In Count 1 of the Complaint, the Clerk asserts that there is an actual and present bona fide dispute between the Clerk and the Defendants regarding “the Clerk’s duties and the Defendants[’] rights.” The Clerk asserts that there is a justiciable question regarding whether she has “power to refuse to disburse public funds where she finds such disbursement to be unlawful, and whether the disbursement of public funds to the private retirement accounts of elected officials of the County was and is unlawful.” The Clerk asserts that there is a bona fide, actual, present need for the declaration.

More specifically, the Clerk requests a judicial declaration that disbursement of public funds to the private retirement accounts of elected County officials, pursuant to the ICMA Agreement, is not authorized by law and prohibited; past disbursement of public funds to the

private retirement accounts of the three commissioners pursuant to the ICMA Agreement was unlawful; the Clerk has the power and duty to refuse to make disbursements from the public treasury where such disbursements are not authorized by law; and the funds unlawfully disbursed from the public treasury for the benefit of the three commissioners should be returned to the public treasury.

In Count 2, the Clerk asserts that injunctive relief is necessary to carry out the relief requested in Count 1 and is within the ancillary jurisdiction of the Court. The Clerk requests that the three commissioners be ordered to return all public funds unlawfully paid to their private retirement accounts under the ICMA Agreement.

Legal Authority

Declaratory Relief

“A complaint for declaratory relief under chapter 86, like any other complaint, must be legally sufficient. In general, the complaint must allege that: (1) there is a bona fide dispute between the parties; (2) the plaintiff has a justiciable question as to the existence or nonexistence of some right, status, immunity, power or privilege, or as to some fact upon which existence of such a claim may depend; (3) the plaintiff is in doubt as to the claim; and (4) there is a bona fide, actual, present need for the declaration.” Ribaya v. Bd. of Trustees of City Pension Fund for Firefighters & Police Officers in City of Tampa, 162 So. 3d 348, 352 (Fla. 2d DCA 2015).

“[O]nce a trial court determines that a plaintiff has sufficiently pleaded the essential elements for a declaratory action, circumstances beyond the pleadings may be apparent and may signal to the trial court that there is not a bona fide need for declaratory relief.” Id. at 353.

“[I]f at the time the proceeding for a declaratory decree is initiated a suit is already pending which involves the same issues and in which litigation the plaintiff in the declaratory

decree action may secure full, adequate and complete relief, such bill for declaratory decree will not be permitted to stand.” Taylor v. Cooper, 60 So. 2d 534, 535 (Fla. 1952). “While the existence of another available remedy does not preclude a judgment for declaratory relief, a viable declaratory claim must be asserted and exceptional circumstances must be shown for the prosecution of such a claim where there is a pending suit at the time the action is initiated, and the issues raised in the action can be resolved in the pending suit.” Berrios v. Deuk Spine, 76 So. 3d 967, 970 (Fla. 5th DCA 2011).

Motion to Dismiss

“In ruling on a motion to dismiss, a trial court must accept as true all well-pled allegations and limit its consideration of facts to the four corners of the complaint.” Florida Carry, Inc. v. Univ. of Florida, 180 So. 3d 137, 148 (Fla. 1st DCA 2015).

Discussion

The Court finds that on the Complaint’s face, the Clerk has sufficiently pleaded the essential elements for a declaratory action. However, as noted by the Clerk in the Complaint, there is a pending mandamus action. The Court finds that the mandamus suit will resolve the determinative issues in the present case. Both the mandamus action and the present case ultimately turn on whether the County’s local retirement plan is unlawful as to elected officials. Consequently, the Court finds that the essentially duplicative declaratory action pleaded in Count 1 should not proceed. For at least the reason that Count 2 depends on Count 1, Count 2 must also be dismissed.

Ruling

Therefore, it is **ORDERED AND ADJUDGED** that the Defendants' Motion to Dismiss the Clerk's Complaint is **GRANTED** and the Clerk's Complaint is **DISMISSED**.

DONE AND ORDERED in Fort Walton Beach, Okaloosa County, Florida.

WFS/ceb



eSigned by CIRCUIT JUDGE WILLIAM STONE
on 07/05/2022 16:49:31 aqwjvV8+
