E-FILED 2017 MAY 16 10:34 AM MUSCATINE - CLERK OF DISTRICT COURT

IN THE IOWA DISTRICT COURT IN AND FOR MUSCATINE COUNTY

DIANA L. BRODERSON,	:	EQUITY NO.
Plaintiff,	:	
vs.	:	PETITION FOR WRIT OF CERTIORARI
CITY OF MUSCATINE, IOWA, and CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA,	:	
Defendant.		

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Plaintiff states:

1. Plaintiff is a resident and citizen of the City of Muscatine, Iowa.

2. Defendant City of Muscatine, Iowa is a municipal corporation with its principal place of business located at 215 Sycamore Street, Muscatine, Iowa.

3. Defendant City Council of the City of Muscatine, Iowa is the City Council for the municipal corporation of the City of Muscatine with its principal offices located at 215 Sycamore Street, Muscatine, Iowa.

4. On May 11, 2017, the Defendants, acting in a judicial capacity, in a meeting of approximately three minutes duration, voted to remove Diana L. Broderson from her elected position as the Mayor of Muscatine without public deliberation or discussion by Council prior to the vote.

5. Defendants acted illegally and in excess of their jurisdiction, in contravention to Iowa Code Chapter 66, and in violation of Plaintiff's due process rights.

6. On January 12, 2017, the City Council of the City of Muscatine voted to instruct the City Attorney to file written charges of removal against Mayor Broderson. On February 17, 2017, the City Attorney filed those "Written Charges of Removal" with the City Clerk of the City of Muscatine, citing Iowa Code Chapter 66 and Muscatine City Code 1-7-6. The City captioned the matter "In the Matter of Diana L. Broderson."

7. The City Council held a hearing on the matter on March 23, 2017 and April 1, 2017. The Council acted as presiding judge, jury, and fact finder during the over twenty hours of hearing.

8. The City hired a special prosecutor to present the charges to the Council on behalf of the City of Muscatine, and the City Attorney testified on behalf of the City. The City Attorney's law firm provided paralegal assistance to the special prosecutor and the City Attorney's firm provided legal counsel to the City Council throughout the hearings.

9. Following conclusion of the hearings, the parties submitted Briefs and Proposed Findings of Fact to the City Council on May 2, 2017.

10. On May 4, 2017, the City Council voted to set the Decision for "Discussion and Possible Action Regarding Removal Petition" for May 11, 2017.

11. On May 11, 2017, the City Council met for three minutes and voted unanimously to adopt in full the City's Proposed Findings of Fact in their entirety and

issue an Order Removing Diana Broderson from the office of Mayor of Muscatine, Iowa, immediately, by a vote of 7-0.

12. The motion was typed in advance of the meeting and no public deliberation or discussion occurred during the City Council meeting prior to the unanimous vote on the matter.

13. The written decision of the Defendants in this matter is the exact proposed decision filed by the special prosecutor, who was retained by, and acted on behalf of, the City.

14. The written Decision and Order of the Defendants (See "Exhibit A") in this matter shows that the Council acted illegally and exceeded its jurisdiction in the following manner:

A. The City Council acted as investigator, initiated the prosecution by ordering the drafting and filing of charges against the Mayor, and were involved throughout the prosecution of the case. During the hearing, the City Council acted as presiding judge, voting on procedural decisions at each step. Upon hearing the evidence, the City Council then acted as final adjudicator, making the final decision on the charges they originally ordered to be filed against the Mayor, and then issued their unanimous decision without any public deliberation or discussion. The City Attorney also intermingled various functions and did not fully recuse himself or his firm from proceedings, and the City Council also acted inappropriately and acted as witnesses during the time they were acting as adjudicators. These, among other issues apparent from the record, is a clear violation of the Mayor's due process rights under the Iowa and United States Constitutions.

B. Removing Plaintiff from the Office of Mayor for the reasons set forth in the Written Decision of Defendants does not meet the standards for removal from office set forth under the Iowa Code or case law interpreting relevant chapters.

C. Defendants, in their Decision, considered facts not proven or established at hearing in making their final decision and in issuing their Order.

D. Defendants decision was not supported by substantial evidence in the record and was improper, arbitrary, and capricious.

E. Defendants rejected admission of evidence at hearing on the charges filed against Plaintiff which should have been considered in making its Decision.

F. Defendants illegally removed the Mayor from office and acted in a manner contrary to the standards set forth under Iowa law.

15. An appeal is not available to the Plaintiff as a matter of right, and therefore, the Plaintiff's only available remedy is through Writ of Certiorari proceedings.

WHEREFORE, Plaintiff prays that a Stay be immediately issued pursuant to Iowa Rule of Civil Procedure 1.1405. Plaintiff further requests that a writ of certiorari issue herein, and that on hearing thereof, the Defendants' act be annulled and decreed void with no force or effect; and that Plaintiff have judgment of the costs of this action.

Respectfully submitted this 16th day of May, 2017.

MEARDON, SUEPPEL & DOWNER P.L.C.

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ATTORNEYS FOR PLAINTIFF

IN THE IOWA DISTRICT COURT IN AND FOR MUSCATINE COUNTY

DIANA L. BRODERSON, Plaintiff, vs. CITY OF MUSCATINE, IOWA, and CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA, Defendant.	:	EQUITY NO. EQCV023989 MOTION FOR STAY

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Plaintiff states:

1. Plaintiff has filed a Petition for a Writ of Certiorari in the above-captioned matter in the Iowa District Court in and for Muscatine County, Iowa.

2. Plaintiff hereby requests a Stay be immediately issued pursuant to Iowa R. Civ. P. 1.1405, pending final determination of the legality of Defendants' actions.

3. On May 11, 2017, the Defendants, acting in a judicial capacity, voted to remove Diana L. Broderson from her duly elected position as the Mayor of Muscatine.

4. Defendants acted illegally and in excess of their jurisdiction, in contravention to Iowa Code Chapter 66 and in violation of Plaintiff's due process rights. Plaintiff hereby incorporates her Petition for the Writ of Certiorari by reference.

5. Under Iowa R. Civ. P. 1.1405, the Court may stay the original proceedings sua sponte or upon request of the plaintiff.[1]

6. Here, the record shows that on January 12, 2017, the City Council of the City of Muscatine voted to instruct the City Attorney to file written charges of removal against Mayor Broderson. On February 17, 2017, the City Attorney filed those "Written Charges of Removal" with the City Clerk of the City of Muscatine, citing Iowa Code Chapter 66 and Muscatine City Code 1-7-6.

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[1] The official comments published with Rule 1.1405 note that the issuance of a stay can help to avoid useless litigation in the main case, which would be especially desirable it is should be quite apparent that the inferior tribunal is acting illegally or without jurisdiction. See Iowa R. Civ. P. 1.1405, Official Comment from Enactment of 1943 - Former Rule 310.

7. The City Council held a hearing on the matter on March 23, 2017 and April 1, 2017. The Council acted as presiding judge, jury, and fact finder during the over twenty hours of hearing.

8. The City hired a special prosecutor to present the charges to the Council on behalf of the City of Muscatine, and the City Attorney testified on behalf of the City. The City Attorney's law firm provided paralegal assistance to the special prosecutor and the City Attorney's firm provided legal counsel to the City Council throughout the investigation and hearings.

9. Following conclusion of the hearings, the parties submitted Briefs and Proposed Findings of Fact to the City Council on May 2, 2017.

10. On May 4, 2017, the City Council voted to set the Decision for "Discussion and Possible Action Regarding Removal Petition" for May 11, 2017.

11. On May 11, 2017, the City Council met for three minutes and voted unanimously to adopt in full the City's Proposed Findings of Fact in their entirety and issue an Order Removing Diana Broderson from the office of Mayor of Muscatine, Iowa, immediately, by a vote of 7-0. No public discussion or deliberation was held prior to the reading of a motion, which had been typed in advance of the meeting. No public deliberation or discussion occurred during the City Council meeting prior to the unanimous vote on the matter. The written decision of the Council in this matter is the exact proposed decision filed by the special prosecutor, who was retained by, and acted on behalf of, the City.

12. The grant of this stay is supported by law. The Iowa Court of Appeals recently rules that a City Council that is involved in prosecuting, investigating, and deciding a removal case is an example of a clear intermingling of functions, which amounts to a violation of the due process rights of the individual whose removal is being sought under Chapter 66. Burke v. City Council of City of Lansing, 2017 WL 706214, 5 (Slip Copy) (Iowa Ct. App. 2017). Here, the City Council acted as investigator, initiated the prosecution by ordering the drafting and filing of charges against the Mayor, and were involved throughout the prosecution of the case.[2] During the hearing, the City Council acted as presiding judge, voting on procedural decisions at each step.

[2] The record will show that the City Council acted inappropriately during the proceedings while they were in their "adjudicative" capacity, including testifying to the veracity of exhibits while not sworn in or on the witness stand, speak with witnesses during proceedings and during breaks, along with other significant procedural irregularities. The record below will also demonstrate that the Council voted most often to only accept evidence if it was not objected to by the special prosecutor and followed his lead on most decisions made throughout the hearings.

Upon hearing the evidence, the City Council then acted as final adjudicator, making the final decision on the charges they originally ordered to be filed against the Mayor, and then issued their unanimous decision without any public deliberation or discussion.

13. The acts of the City of Muscatine and City Council of Muscatine are a clear violation of Mayor Broderson's due process rights under the Iowa and United States Constitutions. Allowing the lower level tribunal decision to stand during the pendency of this matter further harms Mayor Broderson and the Citizens of Muscatine who duly elected Diana L. Broderson as their Mayor.

14. Due to the timing of hearings, the judicial court calendar, the nature of legal proceedings and the timing of the next election, a Stay is the only way to ensure the rights of the Plaintiff and the Citizens of Muscatine are protected. There is no adequate remedy available to Plaintiff or the Citizens of Muscatine if the Defendants' actions are allowed to stand during the pendency of the proceedings and are later determined to have been illegal.

WHEREFORE, Plaintiff prays that a Stay be immediately issued pursuant to Iowa Rule of Civil Procedure 1.1405 and that Defendants be assessed the costs of this action.

Respectfully submitted this 16th day of May, 2017.

MEARDON, SUEPPEL & DOWNER P.L.C.

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ATTORNEYS FOR PLAINTIFF

E-FILED 2017 JUN 16 9:21 AM MUSCATINE - CLERK OF DISTRICT COURT

IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

DIANA L. BRODERSON, Plaintiff, vs. CITY OF MUSCATINE, IOWA, AND CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA, Defendants.	CASE NO. EQCV023989 RULING ON MOTION FOR STAY

The above-captioned motion was heard in oral argument on June 14, 2017. The plaintiff, Diana L. Broderson, did not appear, but was represented by Attorney William Sueppel. The defendants were represented by their attorney, Amy L. Reasner.

Petition for Writ of Certiorari was filed by the plaintiff on May 16, 2017. The petition is based on the actions by the City Council of Muscatine, Iowa, which, acting in a judicial capacity, entered an order of removal on May 2, 2017, which removed Diana L. Broderson as mayor of the city of Muscatine. On the same date the Petition for Writ of Certiorari was filed, the plaintiff filed a Motion for Stay of the order for removal under Iowa Rule of Civil Procedure 1.1405. That rule states:

> The court may stay the original proceedings even though no stay is requested. If the court grants the plaintiff's request for a stay, the stay may be conditioned upon the plaintiff's filing of a bond with penalty and conditions, including security for costs, as prescribed by the court, and with sureties approved by the court or the clerk.

This motion for stay is resisted by the defendant, arguing that the city council's removal order is self-executing and not subject to stay under the above-stated rule of civil procedure, citing *Scheffers v. Scheffers*, 44 N.W.2d 626 (Iowa 1950). The

defendants further state that Section 66.20 of the Iowa Code indicates that once a judgment of removal is entered, the vacancy must be filled forthwith as provided by law. The defendants also cite Section 66.22, Iowa Code, as indicating the plaintiff cannot be restored to office pending the appeal. However, in reading that section, that applies to proceedings before the district court, not a city council.

During questioning of the Court to defendant's counsel, it was indicated by counsel that Muscatine City Council could have contacted the Muscatine County Attorney to institute the proceedings, but chose not to because the county attorney was called as a witness during the hearing on this matter. Counsel for the defendant agreed that the City Council of Muscatine could have contacted the attorney general pursuant to Iowa Code Section 66.3(1), but chose not to make this request. Instead, the city council instructed the city attorney to bring charges of removal on January 12, 2017. Shortly thereafter, the city council also chose to hire independent counsel to prosecute the case after an investigation. There is no indication by defendants that Chapter 66 authorizes the hiring of independent counsel to prosecute this matter. After independent counsel investigated the matter, written charges of removal were filed with the city clerk by the city attorney on February 17, 2017. Hearing was held before the city council on March 23, 2017, and April 1, 2017, with the hired independent counsel presenting evidence. The plaintiff was also represented by counsel during the hearing. Brief, argument, and a proposed Findings of Fact were presented by both the independent counsel and Diane Broderson's counsel. On May 11, 2017, the city council adopted verbatim the Findings of Fact submitted by the independent counsel

who was hired by the City. No changes or additions were made by the city council to these Findings of Fact as proposed.

In reviewing the Findings of Fact and Order in the City of Muscatine's written charges of removal, the Court finds seventeen references to the alleged activities of Mayor Broderson that directly affected the city council. The city council found that Mayor Broderson made personal charges on the character and motives of the council, the council created a hostile work environment, that they discriminated against her, that they created a committee without properly authorizing that committee, that she accused one city council member of criminal conduct, that she filed a complaint against the city council to the Iowa Public Information Board, she requested the auditor for the State of Iowa to review the 2014/2015 city audit without first discussing the request with the city council, that she again contacted the Iowa Public Information Board claiming that she was inappropriately excluded from a city council meeting, and that she again contacted the Muscatine County Attorney to file criminal charges against the entire city council. Other references were made in the Findings of Fact concerning Mayor Broderson's alleged actions which were allegedly critical of the conduct of the city council. Despite the fact that these allegations were made and directly impugn the integrity of the city council and specifically requested criminal charges be filed against the council as a whole and one specific council member, the city council proceeded to hear this matter, despite having personal knowledge of the above matters prior to the hearing.

The Court would indicate that based on case law cited below, that the city council sitting as jurists adjudicating the issues involved, despite their personal interests allegedly adversely affected by Mayor Broderson's actions, would, in all probability,

result in these proceedings being declared unconstitutional, in violation of the Fourteenth Amendment of the U.S. Constitution and Article I, Section 9, of the Iowa Constitution, voiding the proceedings in its entirety. This will be left for the Court to decide at the final hearing on this matter after review of the transcript and any additional testimony elicited by the parties. The parties are instructed to notify the Court in writing by July 10, 2017, at 4:30 p.m. if they request further testimony at the final hearing, which the Court has set for July 17, 2017, at 9:00 a.m.

CONCLUSIONS OF LAW

The official comment to Iowa Rule of Civil Procedure 1.1405, which allows the Court to grant a stay at its discretion, states, in part, that a stay "will be especially desirable if it should be quite apparent that the inferior tribunal is acting illegally or without jurisdiction." A stay order does not affect the merits of the controversy to be heard at the final hearing and is meant to maintain the status quo prior to the inferior tribunal's decision and is intended only to delay the enforcement of the action stayed. *Hanna v. State Liquor Control Commission*, 179 N.W.2d 374, 376 (Iowa 1970).

The Fourteenth Amendment to the United States Constitution and Article I, Section 9, of the Iowa Constitution provide that no person shall be deprived "of life, liberty, or property, without due process of law." U.S. Constitutional Amendment XIV, Section 1; Iowa Constitution Article I, Section 9. "Due process requires fundamental fairness in a judicial proceeding, so a trial that is fundamentally unfair violates the guarantees of due process in the United States and Iowa Constitution." *More v. State*, 880 N.W.2d 487, 499 (Iowa 2016). "Due process always involves ... a constitutional

floor of a fair trial in a fair tribunal." *Botsko v. Davenport Civil Rights Commission*, 774 N.W.2d 841, 848 (Iowa 2009).

To ensure a fair trial and a fair tribunal, "no man is permitted to try cases where he has an interest in the outcome." *Keith v. Community School District*, 262 N.W.2d 249, 259-60 (Iowa 1978). In *Burke v. City Council of Lansing*, No. 15-1797, 2017 WL 706214*5 (Iowa Ct. App. Feb. 22, 2017), it was held that a city council's involvement in prosecuting, investigating, and deciding a removal case, "violated due process because of the "intermingling of functions." Due to the above-stated factual findings by the Muscatine City Council which suggest inherent conflicts of interest and personal knowledge of the allegations which was presented before them by their special counsel, the Court finds there is a probability that the actions of the city council in acting as jurists in adjudicating the matter of removal will be set aside. This decision will be left to the Court at the final hearing.

RULING

IT IS THE RULING OF THIS COURT that pursuant to Iowa Rule of Civil Procedure 1.1405 the order of removal of Mayor Diana Broderson by the City Council of Muscatine, Iowa, is stayed and Mayor Broderson is reinstated in her position as Mayor of the City of Muscatine pending final hearing on this matter. No bond is required to be posted by the plaintiff.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
EQCV023989	DIANA L. BRODERSON V. CITY OF MUSCATINE, ET.AL

So Ordered

Mark J. Smith, District Court Judge,
Seventh Judicial District of Iowa

E-FILED 2017 JUN 29 10:32 AM MUSCATINE - CLERK OF DISTRICT COURT

IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

DIANA L. BRODERSON,, Plaintiff, vs. CITY OF MUSCATINE, IOWA, and CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA, Defendants.	CASE NO. EQCV023989 ORDER

The defendants, City of Muscatine, Iowa, and City Council of the City of Muscatine, Iowa, by and through their attorney, Amy L. Reasner, on June 19, 2017, have filed a motion to enlarge or amend pursuant to Iowa Rule of Civil Procedure 1.904(2). The plaintiff, Diana L. Broderson, by and through her attorney, William Sueppel, filed their resistance to the motion on June 23, 2017.

In their motion the defendants request the Court to address the argument made at the time of the hearing that the order impeaching Mayor Broderson is self-executing and, therefore, cannot be stayed unless the Court gives reasons for the stay order.

In the Court's ruling, the Court found that there is a probability that the impeachment proceedings conducted by the City Council of Muscatine would be held unconstitutional, in violation of the Fourteenth Amendment of the U.S. Constitution and Article I, Section 9, of the Iowa Constitution. The Court further held that if the Court, after the final hearing on this matter, finds that the proceedings were unconstitutional, this would void the order of impeachment in its entirety. This would mean that the proceedings were void ab initio and, therefore, any order issuing from the City Council

for impeachment would not be self-executing in that the proceedings were void from their inception.

IT IS THEREFORE THE RULING OF THIS COURT that defendant's motion should be, and is hereby, denied.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
EQCV023989	DIANA L. BRODERSON V. CITY OF MUSCATINE, ET.AL

So Ordered

Mark J. Smith, District Court Judge,
Seventh Judicial District of Iowa