

W. Rev. White
ss.

9 am of Bay Munro

Circuit Court
Spring Term
1970

Comes the Defendant and moves
the Court to strike the Complaint and
assigns as grounds of said motion
the following:

1.

Said Complaint ~~facts~~ shows
upon its face that this Court
has no jurisdiction of the amount sued
for.

2.

The amount sued for is for exactly
\$50.00 a sum less than the jurisdiction
of this Court.

Pay removed
Atty for Deft.

1920-5-25
1919-4-12

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207-58

166
138

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12/1646064

1867

113838

6919

207-58

18-67

226 25

W. R. White, as Guardian,

Plaintiff,

Vs.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

Town of Bay Minette,

Defendant.

NOW comes the defendant and demurs to each count of the complaint separately and assigns the following separate grounds of demurrer to each count:

1.

Said count shows on its face that the defendant is not liable for the attorney's fees sought to be recovered.

2.

Said count shows on its face that the judgment alleged to have been entered in said cause is wholly void.

3.

Said count of said complaint seeks to recover an attorney's fee from this defendant for defending an ad quod damnum proceedings instituted by a municipal corporation under article 29 of chapter 32 of the Code of 1907 and this defendant is not liable for such attorney's fee under the law.

4.

There is no law making this defendant liable for an attorney's fee such as this count of this complaint seeks to recover.

Page & Moorer

Attys. for Defendant.

W. R. White, as Guardian,
Plaintiff,

IN THE CIRCUIT COURT OF
BALDWIN COUNTY?

vs.

ALABAMA.

Town of Bay Minette,
Defendant.

Now comes the defendant and moves the
Court to strike the complaint in this cause and assigns the
following separate grounds for said motion:

1.

Said complaint states no cause of action.

2.

Said complaint shows upon its face that this defendant is
not liable for the attorney's fee sought to be recovered
in said complaint.

3.

A municipality is not liable for an attorney's fee in
defending a proceedings to condemn lands to be used as a
street.

4.

Said complaint seeks to recover on a judgment shown on
its face to be void.

5.

The judgment alleged to have been entered into the said cause
is without authority of law, and would deprive this defend-
ant of its day in Court.

Page & Moorer,

Attys for Defendant.

W. R. WHITE, as Guardian of
Andrew J. Hamilton, Morris B.
Hamilton, Amanda L. Hamilton,
John T. Hamilton and Mattie M.
Hamilton, minors,

Plaintiff,

-VS-

IN THE CIRCUIT COURT OF
BALDWIN COUNTY.

TOWN OF BAY MINETTE, a Corporation,
Defendant.

Now comes the plaintiff in the above entitled
cause, and asks leave of the Court to amend the complaint so as
that the said complaint will read as follows:

The plaintiff claims of the defendant the sum
of Fifty (\$50.00) Dollars, with interest thereon from November 20th,
1918, as damages, for that on or about the 3rd day of January, 1918,
the defendant instituted proceedings to condemn certain lands be-
longing to the plaintiff for a street and that on or about the
20th day of May, 1918, the Judge of the Circuit Court of Baldwin
County entered a judgment and decree assessing the value of the land
at \$500.00 and which amount was assessed as damages, provided that
the defendant may pay said amount at any time within six months from
the date of said judgment, and that should the defendant fail to
pay the said damages to the plaintiff that the said assessment should
cease to be binding on the owners of said land and that the defend-
ant should pay to the owners of said land all damages which they
sustained by the institution of these proceedings, including a
reasonable attorney's fee for the defending of same; and plaintiff
alleges that the six months has expired and that the defendant did
not pay the damages as assessed and has not paid the owners of
said land the damages they sustained by the institution of said
proceedings and have never paid a reasonable attorney's fee for
defending the same; and plaintiff further alleges that he was
compelled to employ attorneys to represent him as Guardian in such
matter, that he paid said attorneys the sum of \$50.00 and which he
alleges to be a reasonable attorney's fee; and plaintiff further
alleges that on the 4th day of March, 1919, and before the commence-
ment of this suit he, as such guardian, filed with the Clerk of the
Town Council of the said Town of Bay Minette, Alabama, an account
verified by the affidavit of the plaintiff in this cause for the said
sum of \$50.00 attorney's fees, paid by plaintiff to his attorneys
for defending said suit, and the said Town Council have refused to
pass upon the said account and have failed and refused to audit,
allow and pay said attorney's fee to the plaintiff, and that the
said defendant has never paid said attorney's fee and for which said
attorney's fee he herewith sues.

Gordon & Cowley

Chas. Hall

ATTORNEYS FOR PLAINTIFF.

State of Alabama,
Baldwin County.

TO THE HON. T. W. RICHMOND, CLERK OF THE CIRCUIT COURT
IN AND FOR SAID COUNTY AND STATE:

Your petitioner, W. D. Stapleton, respectfully represents and
shows:

1.

That he is over the age of 21 years and is a resident and citizen of the Town of Bay Minette, Alabama, and is Mayor of the said Town of Bay Minette, Alabama, and presents this petition as such Mayor.

2.

That the Town Council of the Town of Bay Minette, Alabama, did on the 18th day of December, 1917 adopt a resolution which resolution directed and required that your petitioner as such Mayor acquire by purchase or condemnation proceedings a right-of-way for a street over and across the following described lands, viz:

Beginning at a point 75 feet South of the main line of the Louisville & Nashville Railroad and about 25 North of the Section line dividing sections 9 and 16; thence running South 841 feet; thence East 451 feet; thence Northwest 840 feet; thence West 136 to the point of beginning, said lot or parcel of land being situated in Section 9 and 16, Township 2 South of Range 3 East, situated, lying and being in the Town of Bay Minette, State of Alabama, which said right-of-way so to be acquired over and across the said lands above described is described as follows, viz:

Beginning at an iron stake on the East side of the South end of Hoyle Avenue, for a point of beginning and running thence West 60 feet; thence in a Southerly direction in a direct line with the Western edge or line of Hoyle Avenue 759.7 feet to the property of the Bay Minette Land Co.; thence East 60 feet; thence North and parallel with the other edge of proposed street 759.7 feet to the point of beginning, situated, lying and being in the Town of Bay Minette, Alabama.

3.

That the said lands above described are owned by Andrew J. Hamilton, Morris Hamilton, Amanda Louise Hamilton, John Thomas Hamilton and Mattie May Hamilton, jointly, share and share alike, and that each of the owners of

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said land is a minor, under the age of 21 years, and each of the said minors reside in Baldwin County, Alabama. That on account of the facts that the owners of the said land are minors, your petitioner, as Mayor of the Town of Bay Minette, Alabama, is unable to purchase the said right-of-way to be used as a street of the Town of Bay Minette, Alabama, from the said owners.

PRAYER:

The premises considered, your petitioner, as Mayor of the Town of Bay Minette, Alabama, respectfully prays that a writ of ad quod damnum be issued directed to the Sheriff of Baldwin County, Alabama, directing and commanding that the Sheriff summon three freeholders of Baldwin County, Alabama, to appear before the Sheriff on a day named, not less than two days from the date of the writ, and to proceed under his direction to assess a value of the lands of such owners and proprietors for the use thereof, which said writ shall describe the land so to be taken, and the uses for which the said land is desired.

That notice of the filing of this application be given for three successive weeks by publication in some news paper published in Baldwin County, Alabama, before the issuance of the said writ as required by law.

That if your petitioner is mistaken in the relief above prayed for that he be granted such other, further, different and general relief as in justice and equity he may be entitled to receive, he will ever pray, etc.

W. D. Stapleton
Mayor.

State of Alabama, Baldwin County.

Before me, Henry D. Moorer, a Notary

Public in and for said County and State personally appeared W. D. Stapleton, who being by me first duly and legally sworn, doth depose and say: The allegations contained in the foregoing petition are true.

W. D. Stapleton

Sworn to and subscribed before me, this the 2 day of January, 1918.

Henry D. Moorer
Notary Public.

W. R. White, as Guardian of
Andrew J. Hamilton, Morris E.
Hamilton, Amanda L. Hamilton,
John T. Hamilton and Mattie M.
Hamilton, minors,
Plaintiff,

Vs.

Town of Bayminette, a corporation,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY.

The plaintiff claims of the defendant the sum of Fifty (\$50.00) Dollars, as damages, for that on or about the 3rd, day of January, 1918, the defendant instituted proceedings to condemn certain lands belonging to the plaintiff for a street and that on or about the 20th, day of May 1918, the Judge of the Circuit Court of Baldwin County entered a judgment and decree assessing the value of the land at \$500.00 and which amount was assessed as damages, provided that the defendant may pay said amount at any time within six months from the date of said judgment, and that should the defendant fail to pay the said damages to the plaintiff that the said assessment should cease to be binding on the owners of said land and that the defendant should pay to the owners of said land all damages which they sustained by the institution of these proceedings, including a reasonable attorney's fee for the defending of same; and plaintiff alleges that the six months has expired and that the defendant did not pay the damages as assessed and has not paid the owners of said land the damages they sustained by the institution of said proceedings and have never paid a reasonable attorney's fee for defending the same; and plaintiff further alleges that he was compelled to employ attorneys to represent him as Guardian in such matter, that he paid said attorneys the sum of \$50.00 and which he alleges to be a reasonable attorney's fee; and plaintiff further alleges that on the 4th, day of March 1919, and before the commencement of this suit he, as such guardian, filed with the Clerk of the Town Council of the said Town of Bayminette, Alabama, an account verified by the affidavit of the plaintiff in this cause for the said sum of \$50.00 attorney's fees, paid by plaintiff to his attorneys for defending said suit, and the said Town Council have refused to pass upon the said account and have failed and refused to audit, allow and pay said attorney's fee to the plaintiff, and that the said defendant has never paid said attorney's fee and for which said attorney's fee he herewith sues.

*Chas. Hall &
Gordon T. Edgington*
Attorneys for Plaintiff.

No.

Walter R. White, as Guardian
of Andrew J. Hamilton,
et als.

v. s.

Town of Bayanette.

In Circuit Court of
Baldwin County.

Filed Nov 8th 1919
D. W. Harrison
Clerk

The State of Alabama, }
BALDWIN COUNTY.

CIRCUIT COURT

No.

Full Term, 1919.

To Any Sheriff of the State of Alabama:

You are hereby commanded to summon Town of Bay Minette, a Corporation,

to appear and plead, answer or demur, within thirty days from the service hereof, to the Complaint filed in the Circuit

Court of Baldwin County, State of Alabama, at Bay Minette, against it Defendant

by W.R. White, as Guardian of Andrew J Hamilton, Morris B Hamilton,
Amanda I. Hamilton, John T Hamilton and Mattie M Hamilton, Minors. Plaintiff

Witness my hand this 8th day of November 1919

COMPLAINT

Clerk.

Plaintiff Versus

The Plaintiff claims of the Defendant

Dollars due by

Plaintiff's Attorney.

722 Original

No. 1541

State of Alabama,

BALDWIN COUNTY.

CIRCUIT COURT

W.R. White, as Guardian,

Plaintiffs

Vs.

Town of Bay Minette, a

Corporation.

Defendants

SUMMONS AND COMPLAINT

Filed November 8th, 1919.

J.W. Richmond

Clerk

Defendant lives at

Chas Hall, Gordon and Eddington.

Plaintiff's Attorney

Defendant's Attorney

Baldwin Times Print

Received in office

November 8th, 1919. 19

W.R. Stuart Sheriff.

I have executed this Writ

this 8th November 1919
by leaving a copy of the within summons and complaint with

W.D. Stapleton as
Mayor of the
Town of Bay
Minette Alabama

W.R. Stuart Sheriff.

Deputy Sheriff.

Recd Copy on
W.D. Stapleton as Mayor
of Town of Bay Minette

W. R. White, as Guardian of
Andrew J. Hamilton, Morris
B. Hamilton, Amanda L. Hamilton,
John T. Hamilton and Mattie M.
Hamilton, minors. Plaintiffs.

vs

Town of Bay Minette, a corpo-
ration Defendant.

IN THE CIRCUIT COURT,
BALDWIN COUNTY, ALA.

Comes the Defendant and xxx demurs to the Complaint in
the above styled cause and assigns the following grounds:

1. That the complaint fails to allege a cause of action.
2. That the complaint shows on its face that payment has
not been refused.

PAGE & MOORE,

Attorneys for Defendant.

Filed this 29th
day of November,
1919.

J. W. McInnis

clerk