

1184

STATE OF ALABAMA ex. rel. : NUMBER ~~2077~~ 1184
A. C. COUNCIL et als : IN THE CIRCUIT COURT OF
vs : BALDWIN COUNTY, ALABAMA
J. MATT BROADUS : AT LAW
DEFENDANT

Comes now J. Matt Broadus and in accordance with the notice served on him, files in this cause:

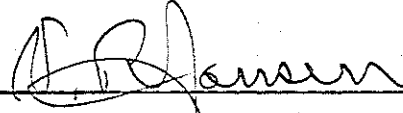
The defendant moves the court to require a deposit of court cost in this proceeding as required by Section 1137 of Title 7 of the Code of Alabama.

Without waiving his rights under the above motion, comes now the defendant ^{and} demurs to the petition filed against him on the following separate and several grounds of demurrer:

1. The petition does not clearly set forth the act or omission complained of.
2. It does not appear that the defendant ever sought to act or did act as councilman after April 26, 1948.
3. It is not alleged that defendant Broadus was a member of the council of the town of Daphne on the 26th day of April, 1947.
4. It is not alleged that defendant lacked any qualifications for the office of councilman.
5. It is not shown that the validity of the defendants election could not be contested under the laws of Alabama.
6. It appears that petitioner seeks to remove the defendant from office for alleged misconduct in office without filing impeachment proceedings as required by law.
7. It affirmatively appears that the town council of Daphne accepted the defendant as a member of said council and said council is the judge of the qualifications of its' members.
8. It does not appear that the town council of Daphne or the members thereof have filed this proceeding.
9. It does not appear that the governing body of the town of Daphne instituted these proceedings or determined the election of the defendant to be illegal.
10. It does not appear the the proposed improvement described in exhibit "b" was ever carried out.
11. It does not appear that the authority given by the resolution shown in exhibit "b" was ever exercised.

12. It does not appear from the petition that funds were ever expended on motion of the defendant as alleged in paragraph two(2) of the petition.

13. The allegation "all elections for officers of such towns under the law of this state require the concurrence of a majority" is a conclusion of the pleader and is not a fact ~~for~~ a rule of law.

A handwritten signature in dark ink, appearing to read "D. B. Hansen", is written over a horizontal line.

Attorney for Defendant

RECORDED

filed

5-1-48

alice french
Reg.

STATE OF ALABAMA, ex. rel.

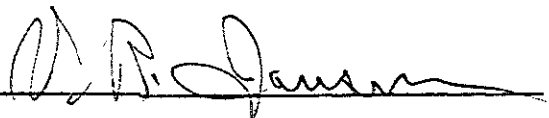
J. M. PROADUS
PLAINTIFF

VS

E. N. BELL AND LEONARD
TRIONE,
DEFENDANTS .

: IN THE CIRCUIT COURT
:
: OF BALDWIN COUNTY,
:
: ALABAMA
:
: AT LAW

Comes the petitioner and amends the name of E. N. Bell to
read E. C. Beall as it appears in the petition and alternate writ.

x 

Attorney for Plaintiff

STATE OF ALABAMA, ex rel	:	IN THE CIRCUIT COURT
J. M. BROADUS	:	OF
PLAINTIFF	:	BALDWIN COUNTY,
VS	:	ALABAMA
E. N. BELL AND LEONARD	:	AT LAW
TRIONE,	:	
DEFENDANTS	:	

TO THE HONORABLE JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA:

Comes the State of Alabama on the relation of J. M. Broadus and brings this his petition for the extraordinary writ of mandamus against E. N. Bell and Leonard Trione as individuals and as members of the city council of the municipality of Daphne in Baldwin County, Alabama and shows to this Honorable Court as follows:

1. That your relator is over the age of twenty-one years and a resident citizen of the municipality of Daphne in Baldwin County, Alabama; that he and J. J. Andrews and Gus Bertognolli and the defendants are members of and compose the City Council of the City of Daphne, that the defendants are each over the age of twenty-one years and resident citizens of the City of Daphne.

2. Relator further shows that Trione was duly elected by the City Council to serve as presiding officer, president or mayor on the resignation of the duly elected mayor of said municipality.

3. Relator further shows that the said Trione willfully absents himself from the meetings of the council and failed and refused on the request of relator and J. J. Andrews to call a meeting of said City Council whereupon relator and J. J. Andrews called a meeting under Section 430 of Title 37 of the Code of Alabama to be held at 8:00 P. M. Monday April 19th, 1948 of which written notice was given to the defendants and the town clerk and each of the defendants together with the town clerk willfully abstained from attending said meeting thereby preventing a quorum of said council from being present and those present

being only three in number, could transact no business and could carry on no meeting.

4. The relator further shows to the court that no claims against the municipality can be passed upon and no orders of payments or appropriations made, that the municipality of Daphne has purchased by conditional sale contract an expensive truck which is being paid for by monthly installments and no payments have been made for sixty days although funds are on deposit subject to the check of the city officials for the payment of such indebtedness and that the city employee could not be paid and all work for the city has been suspended and the city is in danger of suffering financial loss if the contract for the purchase of the truck is enforced and the truck is repossessed.

5. Relator further shows that the city government has in effect abandoned the performance of its duties as required by law and the people of the municipality are deprived of the services of the governing body as an incident to the failure of said councilmen to hold meetings as required by law or to attend same as required by law.

Wherefore, these premises considered, relator prays that this Honorable Court issue its alternative writ of mandamus directed to the defendants E. N. Bell and Leonard Trione as members of the City Council of the town of Daphne, ordering and requiring them to call and attend a meeting of the council of said city at a time fixed by this Honorable Court and at such meeting to consider and act upon the payment of bills, claims and charges and to consider and act upon the election of councilmen as provided in Section 427 of Title 37 of the Code of Alabama, or to show cause within the time required by law and the rules of this Honorable Court why they and each of them should not be required to do so. Relator further prays that on a final hearing of the cause this Honorable Court will be pleased to find and adjudge that relator is entitled to the relief prayed herein and that your Honor will issue its extraordinary writ of mandamus directed

to the defendants requiring them to hold and attend meetings as provided by law of the governing body of said municipality and the council of said town.

J. M. Broadus
Petitioner

Attorney for Relator

STATE OF ALABAMA
COUNTY OF Mobile BALDWIN

Before me, the undersigned authority in and for said State and County personally appeared J. M. Broadus, who being first duly sworn, did depose and say that he is the relator in the foregoing petition and that the facts stated therein are true to the best of his knowledge and belief.

J. M. Broadus

Sworn to and Subscribed to
before me this the 26th day
of April, 1948.

Samuel R. Lamm
Notary Public, Baldwin County, Alabama

STATE OF ALABAMA

COUNTY

TO THE CLERK OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA:

Let the alternative writ issue returnable May 13th, 1948.

April, 1948.

H. W. Hale
Judge

STATE OF ALABAMA, ex rel	:	IN THE CIRCUIT COURT
J. M. BROADUS	:	OF
PLAINTIFF	:	BALDWIN COUNTY,
VS	:	ALABAMA
E. N. BELL AND LEONARD	:	AT LAW
TRIONE,	:	
DEFENDANTS	:	

To E. N. Bell and Leonard Trione; pursuant to an order made by this Court on this 26th day of April, 1948, by the Honorable J. W. Hare, Judge, in the above entitled case, you are hereby commanded forthwith to call a meeting of the City Council of the town of Daphne, Alabama and you are commanded to attend such meeting and attend to the business of the town of Daphne as required by law; or that you appear before this Honorable Court on the 13th day of May, 1948 at 10:00 O'clock A. M. then and there to show cause, if any there be, why you should not do and perform the aforesaid duties and things.

Herein fail not and have you then and there this writ.

Dated this 26th day of April, 1948.

Attest

Alice J. Luck
Clerk of the Circuit Court of
Baldwin County, Alabama

STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETINGS:

You are hereby commanded forthwith to serve a copy of the above alternative writ of mandamus on E. N. Bell and Leonard Trione, members of the City Council of the Twon of Daphne, Baldwin County, Alabama, and make due return thereon, according to law,

Witness my hand this the 26th day of April, 1948.

Attest

Alice J. Luck
Clerk of the Circuit ~~xx~~ Court of
Baldwin County, Alabama

1184

RECORDED

RECORDED

Received in Sheriff's Office
this 26 day of April, 1948
TAYLOR WILKINS, Sheriff

Executed 5-6-48 1948
by serving copy of within affidavit writ of
mandamus Complaint on

Leonard Trione 5-6-48

E. C. Beall 5-12-48

E. C. Beall 5-12-48

Taylor Wilkins Sheriff

By H. F. Hall Deputy Sheriff

Returned 7 day of May 1948
and in my county after diligent search and in-
quiry. E. N. Bell

Taylor Wilkins Sheriff

By H. F. Hall Deputy Sheriff

FILED
APR 26 1948
ALICE J. DUCK, Clerk

STATE OF ALABAMA, ex rel	:	IN THE CIRCUIT COURT
J. M. BROADUS	:	OF
PLAINTIFF	:	BALDWIN COUNTY,
VS	:	ALABAMA
E. H. BELL AND LEONARD	:	AT LAW
TRIONE,	:	
DEFENDANTS	:	

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1. That your relator is over the age of twenty-one years and a resident citizen of the municipality of Daphne in Baldwin County, Alabama; that he and J. J. Andrews and Gus Bertognolli and the defendants are members of and compose the City Council of the City of Daphne, that the defendants are each over the age of twenty-one years and resident citizens of the City of Daphne.

2. Relator further shows that E. Trione was duly elected by the City Council to serve as presiding officer, president or mayor on the resignation of the duly elected mayor of said municipality.

3. Relator further shows that the said E. Trione willfully absents himself from the meetings of the council and failed and refused on the request of relator and J. J. Andrews to call a meeting of said City Council whereupon relator and J. J. Andrews called a meeting under Section 430 of Title 37 of the Code of Alabama to be held at 8:00 P. M. Monday April 19th, 1948 of which written notice was given to the defendants and the town clerk and each of the defendants together with the town clerk willfully abstained from attending said meeting thereby preventing a quorum of said council from being present and those present

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Wherefore, these premises considered, relator prays that this Honorable Court issue its alternative writ of mandamus directed to the defendants E. H. Bell and Leonard Trione as members of the City Council of the town of Daphne, ordering and requiring them to call and attend a meeting of the council of said city at a time fixed by this Honorable Court and at such meeting to consider and act upon the payment of bills, claims and charges and to consider and act upon the election of councilmen as provided in Section 427 of Title 37 of the Code of Alabama, or to shew cause within the time required by law and the rules of this Honorable Court why they and each of them should not be required to do so. Relator further prays that on a final hearing of the cause this Honorable Court will be pleased to find and adjudge that relator is entitled to the relief prayed herein and that your Honor will issue its extraordinary writ of mandamus directed

to the defendants requiring them to hold and attend meetings as provided by law of the governing body of said municipality and the council of said town.

J. M. Broadus

Petitioner

Attorney for Relator

STATE OF ALABAMA

COUNTY OF Mobile
~~BALDWIN~~

Before me, the undersigned authority in and for said State and County personally appeared J. M. Broadus, who being first duly sworn, did depose and say that he is the relator in the foregoing petition and that the facts stated therein are true to the best of his knowledge and belief.

J. M. Broadus

Sworn to and Subscribed to
before me this the 26th day
of April, 1948.

Thermal R. J. J. J.
Notary Public, Baldwin County, Alabama

STATE OF ALABAMA

COUNTY

TO THE CLERK OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA:

Let the alternative writ issue returnable May 13th, 1948.

April, 1948.

Judge

STATE OF ALABAMA, ex rel : IN THE CIRCUIT COURT
J. N. BROADUS : OF
PLAINTIFF : BALDWIN COUNTY,
VS : ALABAMA
E. N. BELL AND LEONARD :
TRICONE, : AT LAW
DEFENDANTS

To E. N. Bell and Leonard Tricone; pursuant to an order made by this Court on this _____ day of April, 1948, by the Honorable _____, Judge, in the above entitled case, you are hereby commanded forthwith to call a meeting of the City Council of the town of Daphne, Alabama and you are commanded to attend such meeting and attend to the business of the town of Daphne as required by law; or that you appear before this Honorable Court on the _____ day of May, 1948 at 10:00 o'clock A. M. then and there to show cause, if any there be, why you should not do and perform the aforesaid duties and things.

Herein fail not and have you then and there this writ.

Dated this _____ day of April, 1948.

Attest

Clerk of the Circuit Court of
Baldwin County, Alabama

STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETINGS:

You are hereby commanded forthwith to serve a copy of the above alternative writ of mandamus on E. N. Bell and Leonard Tricone, members of the City Council of the Town of Daphne, Baldwin County, Alabama, and make due return thereon, according to law.

Witness my hand this the _____ day of April, 1948.

Attest

Clerk of the Circuit Court of
Baldwin County, Alabama

1184

Copy

Filed

4-26-48

Reice J. Ruch
clerk

SHARON TO TERRY

TERRY, Y. 1184

1184

TO TERRY, Y. 1184

1189

VERNOL R. JANSEN
LAWYER
205 TITLE INSURANCE BUILDING
MOBILE, ALA.

May 7, 1948

Mrs. Alice J. Duck
Clerk of Circuit Court
Baldwin County Courthouse
Bay Minette, Alabama

Dear Mrs. Duck;

Please find enclosed original copy of this
proceeding. Copy is being sent to Mr. Rickerby.

Very truly yours,



Vernol R. Jansen

VRJ:ib
encl