

BEFORE THE CIRCUIT COURT OF LINCOLN COUNTY, MISSOURI

KARLA K. ALLSBERRY,

Plaintiff,

vs.

JUDGE PATRICK S. FLYNN, in his individual
capacity,

Defendant.

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Case 20L6-CC00031

JUDGMENT OF CONTEMPT

On October 6, 2021, the undersigned entered the Judgment and Permanent Injunction as directed by the mandate of the Supreme Court of Missouri. More than 30 days have elapsed and no appeal was taken.

At issue is the specific injunction that: Defendant Judge Patrick S. Flynn is permanently enjoined from preventing Karla K. Allsberry from performing her duties as the elected Clerk of the Circuit Court of Lincoln County, Missouri.

There has been no change in the factual setting nor in the law giving rise to its existence. The Court declines to modify the injunction. Any unjust or absurd results are the result of the conduct of the parties.

As to the argument that the injunction is not clear, the Court finds this disingenuous. Judge Flynn has asserted and continues to assert that Clerk Allsberry is not performing her duties. As set forth below, one of the duties at issue is staffing.

The allegations from the First Contempt Motion were to the effect that:

1. Judge Flynn held frequent and long meetings interfering with the ability of Clerk Allsberry to perform her duties. The Court finds that this allegation is not supported by the credible evidence.

2. Judge Flynn refuses to permit Clerk Allsberry to include her name on letterhead and envelopes mailed by the Circuit Clerk's office. The Court finds these allegations are not supported by the credible evidence.
3. Judge Flynn refuses to permit Clerk Allsberry to include her name on notices sent to prospective jurors. The Court finds this allegation to be true, but not contemptuous as nothing establishes listing the clerk's name on jury notices to be a duty of the elected clerk.
4. Judge Flynn, in numerous meetings, falsely accuses and publically berates Clerk Allsberry about her job performance. In order to find that Judge Flynn falsely accused Clerk Allsberry, Clerk Allsberry must first prove the statements to be false. The Court finds that Clerk Allsberry failed to convince this court that she was performing her job duties properly or that she has not made numerous mistakes. That Judge Flynn was dissatisfied with the performance of Clerk Allsberry and communicated that dissatisfaction to her directly and publically is undisputed. Whether or not statements were made in a "berating" manner is subjective. The Court finds that none of the witnesses were objective on this issue. While the Court finds that Clerk Allsberry truly felt berated, the Court cannot conclude that this was an objective assessment of the circumstances. Accordingly, the Court finds that these allegations are not proven by the preponderance of the evidence.
5. Judge Flynn frequently assigns tasks to Clerk Allsberry which require her to work with others. While this allegation is found to be true, it is not contemptuous. The Court is not convinced that Judge Flynn's chosen method of jury management interferes with the

duties of the Circuit Clerk.

6. Judge Flynn frequently appears at Clerk Allsberry's door and berates her in public. The Court makes the same findings as in paragraph 4 above.

The Allegations from the Second Motion in Contempt involve the Karen Dye incident, a subsequent determination that the Lincoln County Circuit Clerk's office is a hostile work environment and the administrative order issued in response thereto. Assuming without finding that the Lincoln County Circuit Clerk's office is a hostile work environment, the Court considers the response provided in the administrative order. By invoking building security in the administrative order, Judge Flynn created an impression that Clerk Allsberry was a physical security threat. There was no evidence offered in this hearing to that effect. By threatening Clerk Allsberry with building security¹, Judge Flynn willfully interfered with Clerk Allsberry's performance of her official duties. This violates the injunction.

The allegations of the Third Motion for Contempt involve the performance of clerk duties by Kathy Hall, notably JIS entries and certifications. Given the short handedness of the clerk's office, making JIS entries cannot be said to have interfered with the performance of Clerk Allsberry's duties. Kathy Hall certifying documents as a clerk might implicate some other laws, but allowing it was not credibly shown to have interfered with the performance of Clerk

¹ The significance of relying upon building security is that they really can offer only two (2) responses. They could detain Clerk Allsberry or remove her from the building. There is no evidence of their authority to effect the former and the Supreme Court has clearly ruled that they could not effect the latter at the direction of the presiding judge. Either action would prevent Clerk Allsberry from performing the duties of the Circuit Clerk and would constitute a *de facto* removal.

Allsberry's duties².

The issue about the hiring was not pleaded, but was addressed by both sides with substantial testimony. The Court finds that it was tried by consent.

One of the duties of the Circuit Clerk is to hire Deputy Clerks to assist in the performance of her duties. While the Court of Appeals was sorting out the "appointing authority" issue, the Defendant argues that the Plaintiff is to blame for the staff shortage, admitting that the Circuit Clerk has some duty with respect to staffing. As explained below, the credit for these three non-clearly belongs to the Defendant Judge Flynn and not Clerk Allsberry.

The Lincoln County Employment Committee was created by Judge Flynn, but the evidence clearly established that Judge Flynn controlled the committee but did not feel bound by its decisions. The Court of Appeals stay order required that any hirings be approved in advance and in writing by both Judge Flynn and Clerk Allsberry. In three instances, the "committee" approved the hiring and in the same three instances, Clerk Allsberry agreed in writing to those hires. By insisting upon the execution of a form which was not required by the Court of Appeals, Judge Flynn blocked the hiring of three otherwise agreed to people. Clerk Allsberry's reluctance to sign the proffered form was not unreasonable given Judge Flynn's vocal reliance on *Gall v. Steele*. Judge Flynn's insistence on the execution of "his" form interfered with staffing of the clerk's office and its abilities to properly and timely perform its duties. By telling the staff that the reason for these non-hires was all Clerk Allsberry's fault, Judge Flynn fomented dissent in the office which contributed to the subsequent departure of other staff. This willful conduct of

² While it appears that Judge Flynn is the appointing authority, it is unclear that such authority would allow him to grant clerk authority to one who had not be sworn as a deputy circuit clerk.

Judge Flynn, interfered with the duties of the Circuit Clerk to adequately staff the office, and violates the injunction.

The Court now has the benefit of the Court of Appeals decision which affirms the change to the consolidation agreement making Judge Flynn the appointing authority³. He is now responsible for the hiring in the clerk's office or the lack thereof⁴. This Court cannot sanction Judge Flynn in contempt of an injunction for conduct which he was ultimately found to have lawfully exercised.

The Court now addresses the issues for which specific findings were requested.

1. Defendant has interfered with the ability to timely perform her duties as Circuit Clerk of Lincoln County. Yes, per the findings were made above.

2. Defendant falsely claims Plaintiff is not performing her duties as Circuit Clerk of Lincoln County. No, per the findings were made above.

3. Defendant falsely claims Plaintiff has created a hostile work environment.

The Court does not make a finding whether or not Plaintiff created a hostile work environment as that finding is not material to a determination of contempt. The Supreme Court has already determined that "conduct creating a dysfunctional work environment for the Lincoln County Circuit Court" and the "failure to operate in fact, truth, protocol and respect" did not authorize the *de facto* removal

³ A motion for Rehearing en Banc and for Transfer has been filed and is pending. For the purposes of this ruling, the Court assumes that same will not be granted.

⁴ Court Operating Rule 7 grants this authority to the Appointing Authority. While this authority is currently limited by the Court of Appeals, the undisputed evidence is that Clerk Allsberry agreed to these three (3) hires.

of the circuit clerk. As explained above, it was the provisions of the administrative order invoking building security which violated the injunction.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Judge Patrick S. Flynn be and is hereby found to be in contempt of this Court's judgement of October 6, 2021 by issuing an administrative order threatening the use of Building Security against the elected Circuit Clerk. Judge Patrick S. Flynn may purge this contempt by rescinding those provisions of his administrative order which refer to building security and notifying all parties to whom the order was submitted. Failing to do so within ten (10) days of this order, a fine of \$100 per day will be imposed for each day thereafter the administrative order remains in effect.

SO ORDERED this 22nd day of June, 2022.

Jon E. Beetem, Circuit Judge by Assignment