



Press Statement:
(Attachment Included)



Yesterday afternoon, Judge Mark Scott denied the quo warranto petition seeking to remove Councilwoman Jazzmin Cobble from the Stonecrest City Council.

“I am grateful that Judge Scott has affirmatively ruled that I remain a member of the Stonecrest City Council. We have too much ahead of us to be distracted by petty political disputes. It is best for the people of the city that this second attempt to remove me from office through the courts met the same result as the first attempt.”

“I look forward to continuing to work for the people and call on the individuals who brought this case to reimburse the City for the costs of dealing with this lawsuit and wasting taxpayer funds. Stonecrest’s best days are ahead of it and I look forward to continuing to work for the people of my district and our entire city.”

Proudly Serving,

A handwritten signature in blue ink, which appears to read "Jazzmin Cobble".

**IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA**

Julius Lee, Susan Lee, Althier Eady,
JW Eady, William Bruckner, Linda
S. Frick, Sandra Gassama, Lillie M.
Colson, Gertrude Morgan, Michael
Morgan, Barbara Hall, Fletcher
Hall, Shirley Ebony, Richard
Harang, James Hackett,

Petitioners/Plaintiffs,

v.

Jazzmin Cobble,

Respondent/Defendant.

CASE NO.: 20CV5052

FINAL ORDER

1. This Court granted leave for Petitioners to file a Petition for a Writ of Quo Warranto on September 15, 2020 and then held a hearing to proceed with the inquiry on the writ on September 21, 2020. Upon consideration of all pleadings of record, argument of counsel for the Parties, and all matters properly before the Court, the Court hereby enters the following findings of fact and conclusions of law. There were no disputed issues of a material fact between the parties, so no jury trial was required. O.C.G.A. § 9-6-65.

2. The court finds that Respondent/Defendant Cobble's seat as a Councilwoman for the City of Stonecrest did not become vacant when she did not attend two regular meetings.

3. The court finds that Respondent/Defendant Cobble did not forfeit her seat and the seat did not become vacant when she did not attend two regular meetings. The court further finds that Respondent/Defendant Cobble did not violate her oath of office by not attending two regular meetings, as she did not abandon her duties of the office.

FINDINGS OF FACT

1. Councilwoman Cobble was not in attendance at two regular council meetings of the City of Stonecrest, the first on September 23, 2019 and second on October 12, 2019. Amended/Corrected Petition, ¶ 16.

2. Councilwoman Cobble was absent on those two occasions due to her work obligations. Verified Answer to Petition, ¶ 16.

3. The City of Stonecrest holds two regular meetings per month. Amended/Corrected Petition, ¶ 17.

4. Councilwoman Cobble has attended every other regular meeting held by the City Council prior to and after the two missed meetings noted in paragraph 1 above. Amended/Corrected Petition, Exhibit 1B.

5. Councilwoman Cobble notified the City Clerk that she was not going to be at those meetings before each meeting. Verified Answer to Petition, ¶ 16.

6. Neither the Mayor nor any member of the Stonecrest City Council objected to either of her absences before, during, or after her missed meetings. Verified Answer to Petition, ¶ 22.

7. There was no action taken by the City Council concerning Councilwoman Cobble's absences. Amended/Corrected Petition, ¶ 20.

8. According to the schedule of attendance of the City Council, the Mayor and Councilperson Turner each showed one absence each during 2019. Amended/Corrected Petition, Exhibit 1B; Verified Answer to Petition, ¶ 16.

9. There is no evidence in the record that the Mayor or any other member who was absent from any meeting was ever required to obtain a vote of approval from Council or that any such vote was conducted.

10. A motion to ratify the absences as excused by the Council was limited to four of the six members of the Council, when Councilwoman Cobble and another member of the Council were prevented from voting on the motion. Amended/Corrected Petition, ¶ 27.

11. Councilwoman Cobble is a part-time member of the City Council.

CONCLUSIONS OF LAW

4. “The writ of quo warranto may issue to inquire into the right of any person to any public office the duties of which he is in fact discharging.” O.C.G.A. § 9-6-60. “Although a jury trial is required in a quo warranto proceeding where there are factual questions at issue, see OCGA § 9-6-65, a jury trial is not required where the only issues concern questions of law.” *Jones v. Boone*, 297 Ga. 437, 441, 774 S.E.2d 668, 672 (2015). *Accord*, *Hornsby v. Campbell*, 267 Ga. 511, 515 (4) (480 SE2d 189) (1997); *City of Coll. Park v. Wyatt*, 282 Ga. 479, 480, 651 S.E.2d 686, 688 (2007); OCGA § 9-6-64 (a).

5. A writ quo warranto is the exclusive means of challenging qualification for office under Georgia law. *Everetteze v. Clark*, 286 Ga. 11, 13 (2009); *Hagood v. Hamrick*, 223 Ga. 600, 602 (1967); *Boatwright v. Brown*, 222 Ga. 497 (1966).

6. Removing an official elected by voters from office and creating a vacancy is a significant issue that a court should not lightly undertake, especially recognizing that Georgia has chosen a citizen legislature for its General Assembly and for many of its other jurisdictions. “One of the

effective means of holding the government close to the people has been the insistence on a citizen legislature as distinguished from a professional legislature.” *Ga. Dep’t of Human Res. v. Sistrunk*, 249 Ga. 543, 550 (1982) (Clarke, J., dissenting); *Ga. Ports Auth. v. Harris*, 274 Ga. 146, 147 (2001).

7. The City Charter of the City of Stonecrest provides for forfeiture of office if a member of the Council “fail[s] to attend one-third of the regular meetings of the council in a three-month period without being excused by the council.” Charter, Section 2.03(a). The Charter does not further explain (1) how to set forth the formula for calculating “one-third” of the regular meetings, (2) what a “a three month period” refers to, or (3) a procedure for excusal “by the council.”

8. The Charter also provides that “The office of a councilmember shall become vacant upon the incumbent's death, resignation, forfeiture of office, or removal from office in any manner authorized by this Act or the general laws of the State of Georgia.” Section 2.03(c).

9. Under state law, there are seven ways of vacating public office including death, resignation, a court decision declaring the office vacant, ceasing to be a resident, and a “voluntary act or misfortune of the incumbent” that places him or her in the “specified conditions of

ineligibility,” and failing to apply for commissions, none of which apply in this case. O.C.G.A. § 45-5-1(a).

10. Subsection (a)(7) provides that “abandoning the office or ceasing to perform its duties” is a basis for an office becoming vacant. This provision has been interpreted to require “an absolute relinquishment” and that the officer’s conduct “indicates that he has completely abandoned the duties of the office.” *Patten v. Miller*, 190 Ga. 123, 139 (1940).

11. There is no basis to conclude that Councilwoman Cobble’s absences are a forfeiture of office under the charter that requires her removal from office. In any three-month period of the year, the Stonecrest City Council meets a total of six times. Councilwoman Cobble clearly attended two-thirds of the regular meetings of the Council, because she attended at least four or more meetings in every three-month period. Moreover, her absences were in two different quarters, which are generally the three-month periods into which the year is divided. No objection was lodged to any absences and she informed the Council of those absences in advance.

12. On the issue of whether a vote is needed to constitute an “excused” absence, the schedule of absences for the Mayor and City Council found at the Amended/Corrected Petition, Exhibit 1B, indicates that the

Mayor and another council person were each absent from one council meeting in 2019. There is no evidence that either was required to request approval, was denied approval, or that such question was ever put to a vote by council.

13. The Petitioner requests the court to incorporate the “plain meaning rule” that when interpreting a statute, courts must afford the statutory text its plain and ordinary meaning. Southwestern Emergency Physicians, P.C. v. Quinney, 347 Ga.App. 410, 420 (2018). The court is to presume that the [legislature] meant what it said and said what it meant. Id. In the present case, the City of Stonecrest Charter does not effectuate the process in which the Petitioner must obtain an excused absence, nor does it determine how the excused absences are measured in a three-month period. Therefore, the plain meaning rule does not apply to this case.

14. At most, Plaintiffs have shown the Charter is ambiguous as to whether Councilwoman Cobble has met the conditions for “forfeiture” of her office under its provisions. Given the sweeping remedy of removing a sitting elected official, this Court will not remove an elected official based on what is at best an ambiguous provision of the Charter. The Court urges the City of Stonecrest to create processes or adopt procedures to address these ambiguities going forward.

15. Further, interpreting the charter as urged by Plaintiffs would be contrary to state law. Councilwoman Cobble attended all of the regular meetings held during the remainder of 2019 and has been in attendance at all regular meetings since that time. Her absences are clearly not a “total” and “absolute relinquishment” of her office as required under state law. I therefore conclude that as a matter of law, Councilwoman Cobble did not forfeit her office or violate her oath of office. I further find that any other interpretation of Section 2.03 of the Charter, including that proposed by Plaintiffs, violates state law and is rejected.

16. The Charter further provides that the office of a councilmember shall become vacant upon the listed items “in any manner authorized by this Act or the general laws of the State of Georgia.” Section 2.03(c). Because state law does not allow for forfeiture apart from total relinquishment of office, Councilwoman Cobble cannot be removed from office on the facts alleged in the Petition.

17. Plaintiffs’ arguments that “home rule” applies to this case are inapposite. Home rule applies to charter amendments. *Kemp v. City of Claxton*, 269 Ga. 173, 176, 496 S.E.2d 712, 715 (1998). Further, home rule does not extend to matters involving “the continuance in office and

limitation thereon” for members of a municipal government. O.C.G.A. § 36-35-6(a)(1).

18. Having granted the writ of quo warranto to “inquire into the right of” Councilwoman Cobble to hold office, and having conducted a hearing on the quo warranto petition, there being no grounds to remove Councilwoman Cobble from office, I therefore deny the Plaintiffs’ claim in quo warranto.

19. As mentioned previously, quo warranto is the exclusive remedy to challenge an officer’s qualifications to hold office. *Everetteze*, 286 Ga. at 13. Accordingly, all of Plaintiffs’ remaining claims for injunctive and declaratory relief are barred because Plaintiffs have an adequate remedy. *Id.*

20. All other defenses raised by Councilwoman Cobble are moot.

21. In addition, there being no evidence of bad faith on the part of Councilwoman Cobble or that she has been stubbornly litigious, Plaintiffs’ claims for attorneys’ fees are denied.

22. Having disposed of all of Plaintiffs’ claims, the clerk is directed to close this case.

So ORDERED this 28th day of September, 2020.

A handwritten signature in black ink that reads "Mark Anthony Scott". The signature is written in a cursive style with a large, stylized "S" at the end.

JUDGE MARK ANTHONY SCOTT