

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

NANETTE SAUCIER,

Plaintiff,

v.

JOSHUA B. BUTLER IV,

Defendant.

CIVIL ACTION FILE NO. 2018CV311427

HON. KIMBERLY M. ESMOND ADAMS

FINAL ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

The above-styled case came before the Court on Defendant's Motion to Dismiss Plaintiff's Complaint. At the hearing on Defendant's Motion, Plaintiff appeared *pro se* and Counsel appeared on behalf of Defendant. Upon consideration of the entire record, argument heard at the hearing and applicable authority, the Court hereby **GRANTS** Defendant's Motion to Dismiss Plaintiff's Complaint.

FACTUAL BACKGROUND

Plaintiff Nanette Saucier and Defendant Joshua B. Butler, IV are both city council members serving the City of East Point, Georgia. Plaintiff has filed a declaratory judgment action in an individual capacity as a citizen of East Point, Georgia, moving the Court for an order determining whether Defendant is eligible to hold elected office in East Point, Georgia.

Defendant was elected to office as Councilmember, Ward D-At-Large in East Point. Plaintiff contends that Defendant is in violation of O.C.G.A. § 45-2-1(3) because he was convicted and sentenced for felonies involving moral turpitude. The applicable portion of the statute states:

[a]ny person finally convicted and sentenced for any felony involving moral turpitude under the laws of this or any other state when the offense is also a felony in this state, unless restored to all his rights of citizenship by a pardon from the State Board of Pardons and Paroles . . .

Plaintiff contends that Defendant was convicted of Computer Fraud, Conspiracy to Defraud the United

States and Aiding and Abetting Computer Fraud and that Defendant's civil and political rights were not restored following his conviction.

Defendant filed a Motion to Dismiss Plaintiff's Complaint because Plaintiff has failed to seek leave of court to file her writ of *quo warranto*¹.

LAW AND ARGUMENT

A. Writ of Quo Warranto

The Georgia Supreme Court has held, “[q]uo warranto is an extraordinary remedy which exists solely by virtue of statute.” Anderson v. Flake, 267 Ga. 498, 500(1997)(internal citations omitted). Further, “[a] petition for quo warranto may be filed only by leave of court.” Everetteze v. Clark, 286 Ga. 11, 12, 685 S.E.2d 72, 74 (2009). The petition for leave “. . . must set out good grounds to invoke the leave of the Court. Another important element in the decision of this question is, that the petitioner appeals to the Courts for the assertion of his rights. He presents his complaint under the Constitution and laws of this State, and therefore he must show, in his petition, something upon which the Court, exercising its constitutional functions, can adjudge his right to the office.” Stone v. Wetmore, 44 Ga. 495, 497 (1871).


Defendant maintains that black-letter law prohibits a petitioner from seeking a writ of quo warranto without first asking leave of this Court to do so and that Plaintiff's failure to seek leave before filing her Complaint subjects it to dismissal. However, Plaintiff maintains that her Complaint meets all of the requirements of Federal Rule of Civil Procedure 8(a) and therefore it should not be dismissed. Plaintiff also adds because this matter is now pending before this Court, the Undersigned Judge shall now determine whether Plaintiff has set forth good grounds to proceed with her Complaint against Defendant.

¹ Defendant also raised Plaintiff's lack of standing to file suit in his Motion to Dismiss; however in light of this Court's ruling that it does not have jurisdiction over this matter, Defendant's contention as to standing will not be addressed.

The Court finds based on Georgia Supreme Court precedent that prior to filing this action, Plaintiff failed to seek leave of Court to file her writ of *quo warranto*. See Anderson, 267 Ga. at 500; Everetteze, 286 Ga. at 12; Stone, 44 Ga. 497. The Georgia Supreme Court has held that the purpose of leave is to allow the superior court judge to determine whether a prima facie case has been made in favor of the petitioner *before* the writ is filed. Stone v. Wetmore, 44 Ga. 495, 495 (1871). In Richardson v. Phillips, 285 Ga. 385, 385 (2009), the Georgia Supreme Court held, “[i]n this case, it does not appear from the record that [petitioner] ever obtained leave of court to file a *quo warranto* petition . . . Since the extraordinary remedy of *quo warranto* is not an appropriate remedy in such a case, this Court does not have jurisdiction.” Because there is an absence of evidence in the record that Plaintiff sought leave prior to filing her Petition (which is styled as a Complaint), Plaintiff’s Complaint is procedurally improper and cannot be considered by this Court.

To the extent that the Federal Rules of Civil Procedure would apply to this case, Plaintiff’s contention that her Complaint meets all of the requirements of Federal Rule of Civil Procedure 8(a), in that it is a “short and plain” statement of her claim and that it shows that she is entitled to relief, does not bar dismissal where Plaintiff failed to seek leave prior to filing her writ of *quo warranto*. Lastly, Plaintiff’s assertion that the Undersigned Judge must determine whether Plaintiff has set forth good grounds to proceed with her Complaint against Defendant is incorrect. Pursuant to Stone, this determination must be made *prior to* Plaintiff filing this action, not subsequent to filing her Complaint. Id., 44 Ga. at 497. Accordingly, this Court finds that it lacks jurisdiction over this action and as a result, Defendant’s Motion to Dismiss is hereby **GRANTED**.

SO ORDERED, this 30th day of September, 2019.


HONORABLE KIMBERLY M. ESMOND ADAMS
JUDGE, SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT

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