

IN THE CHANCERY COURT OF THE STATE OF TENNESSEE  
ELEVENTH JUDICIAL DISTRICT

RHEUBIN M. TAYLOR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 22-0788
	)	
WESTON WAMP, as Mayor of	)	Part: 2
Hamilton County, Tennessee,	)	
	)	
Defendant.	)	

**MEMORANDUM IN SUPPORT OF  
MOTION FOR JUDGMENT ON THE PLEADINGS  
OR TO DISMISS**

This Memorandum is submitted in support of Plaintiff’s Motion For Judgment on the Pleadings pursuant to Rule 12.03 of the Tennessee Rules of Civil Procedure with respect to the Counterclaim of Defendant Weston Wamp. That rule provides that “[a]fter the pleadings are closed – but early enough not to delay trial – a party may move for judgment on the pleadings.”

In this motion, Plaintiff asserts that counterclaimant lacks standing to assert the claims contained in his counterclaim, in which he seeks the dismissal of the plaintiff as the county attorney for Hamilton County, Tennessee. Although documents are relied upon in support of the motion, those documents are

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attached to the complaint and countercomplaint and may be considered because they are “not outside the pleadings” without the conversion of the motion to a motion under Rule 56 of the Tennessee Rules of Civil Procedure. *Allied Sound, Inc. v. Neely*, 909 S.W. 2d 815 (Tenn. Ct. App. 1995)

Moreover Rule 12 is particularly situated to test the standing of a party to proceed with a claim. As the Supreme Court in *Knierim v. Leatherwood*, 542 S. W. 2d 806 (Tenn. 1976), stated, “[Standing] is used to refuse to determine the merits of a legal controversy irrespective of its correctness where the party advancing it is not properly situated to prosecute the action.” *Id.* at 808.

#### The Allegations of the Counterclaim

In his Counterclaim Wamp alleges that “Hamilton County first hired Taylor as County Attorney in approximately 1983” and that it “continued to rehire him pursuant to various resolutions duly passed by the Hamilton County Board of Commissioners.” (Counterclaim, ¶16) The Counterclaim then states that on “June 16, 2021, the County Commission passed Resolution 621-18, which permitted the former Hamilton County Mayor to re-appoint Taylor as Hamilton County Attorney.” (*Id.*, ¶13) That Resolution “authorized) the Mayor to enter into and execute a Legal Services Contract,” which was between Taylor and Hamilton County, not Taylor and the Mayor.

Wamp then alleges that Taylor was hired as an at-will employee pursuant to the terms of the Hamilton County Employee Handbook (the “Handbook”). (Id., ¶7) Section 203b of the Handbook, however, provides that the County Attorney is exempt from the Handbook, except for sections listed in that section, and those sections include section 201 which provides that “[n]one of the County’s policies may be construed to create a contract of employment or any other legal obligation, express or implied.” As discussed below at page , the Handbook, therefore, cannot serve to modify the provisions of an otherwise valid contract between the County and any contacting party such as Taylor. Furthermore, the Handbook’s policies cannot modify the term of a four-year contract into an at will employee.

The Counterclaim then refers to the contract between Taylor and Hamilton County as a “purported contract” (e.g., ¶4). Under the purported contract the counterclaim alleges that the contract was for four years from July 1, 2021 to June 30, 2025, and that Wamp had the authority to terminate Taylor’s employment and did so on October 14, 2022. (¶¶17, 25) He alleges that he then “revoked his access to enter the Hamilton County Attorney’s office. (¶26, 28) The County Commission then, he alleges, “inserted itself into the dispute” (¶33) and kept “the terms and conditions of Taylor’s purported Contract . . . in full force and effect”

(¶36) through a resolution which Wamp vetoed, and the Commission overrode. This conduct, he alleges, was “ultra vires.” (¶40) Wamp then recites facts which he alleges constitute grounds for termination, and those grounds will not be discussed, other than to categorically deny them, because Wamp has no grounds to assert them.

In Count One of the counterclaim, Wamp alleges that the sole statutory basis of his authority to terminate Taylor is T.C.A. §§5-6-106(c) and 5-6-112.<sup>1</sup> As a result, he alleges, “only he has the authority to appoint or otherwise employ the County Attorney”. He then turns to the Hamilton County Employee Handbook and asserts that under the handbook Taylor is an at-will employee giving Wamp the right to terminate him. (¶75) (Count One).

. vehemently denied, entitles him to terminate the contract between Taylor and the County Commission.

For the following reasons, Wamp lacks standing to make any claim asserted in his counterclaim based upon his purported ability to terminate the employment of Taylor. The grounds for the motion that the contract is not enforceable is that Wamp lacks standing to make such an argument because he is

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<sup>1</sup> Wamp has voluntarily dismissed Counts Two through Five of his counterclaim, leaving only County One, which is a Declaratory Judgment count.

not a party and, therefore, a stranger to the contract. The grounds for the motion to dismiss Wamp's claim that Taylor is an at will employee is, likewise, based upon his lack of statutory and case authority to make such a claim in the face of Commission action.

As set forth in Exhibit 2 to his Counterclaim, the contract in issue is "between Hamilton County, Tennessee, and Rheubin M. Taylor." Wamp makes no reference in his counterclaim to the language of the contract which provides for its termination only by "a majority of the County Commission with the concurrence of the County Mayor or a two-thirds (2/3) majority of the County Commission without the concurrence of the County Mayor." (Exhibit 2)<sup>2</sup>

## ARGUMENT

### Standing of the Defendant

#### **1. The Contract Claim**

It is axiomatic that a non-party to a contract has no standing to enforce, terminate or otherwise modify a contract. *Owner-Operator Indep. Drivers Ass'n. v.*

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<sup>2</sup> Wamp has apparently abandoned the original grounds he asserted for termination, namely, that the contract is void because the expiration of the term of the Commission during which it was executed has expired. In support of his prior position, he relied upon an opinion letter from a Knoxville attorney, which the County Commission refused to adopt at its meeting on November 2, 2022. The conclusion of this letter is that, under certain circumstances, a contract may not extend beyond the term of the municipal body which agreed to it is directly contradicted by the decision of the Supreme Court in *Washington County Board of Education v. Market America, Inc.*, 693 S.W. 2d 344 (Tenn. 1988). In *Washington*, our Supreme Court upheld a contract that lasted beyond the term of the previous school board. In that decision, the Court relied upon T.C.A. §7-51-901, which empowers a county to enter into long-term contracts.

*Concord*, 599 S.W. 3d 63 (Tenn. 2-011); *Harris v. Wells Fargo Bank N.A.*, 2019 WL 3080764 (W.D. Tenn. 2019) As stated above, the contract of employment of Taylor is stated in the caption of the contract to be “between Hamilton County, Tennessee, and Rheubin M. Taylor” and not between Rheubin M. Taylor and Weston Wamp as Mayor. Further the contract explicitly provides that it may be terminated only by the action of eight members of the Commission or six members of the Commission and the Mayor. (Contract, ¶4) The only mention of the Mayor of Hamilton County in the entire contract is the reference to the Mayor joining with six members of the commission to terminate the contract. He may not initiate that termination under the contract by himself.

In support of his position that he has the authority to terminate Taylor’s contract he cites T.C.A. §§5-6-106(c) and 5-6-112(1). Neither of these sections supports his position. First, Section 5-6-112 provides that “[t]he county mayor has the power to: (1) *If there is no country attorney, employ or retain counsel. . . .* (emphasis added) . Wamp has chosen to disregard the introductory clause, and our Supreme Court has held: “Every word in a statute is presumed to have meaning and purpose, and the statute must be construed in its entirety. “ *Shore v. Maple Lane Farms, LLC*, 411 S.W. 3d 405, 420 (Tenn. 2013). The Supreme Court has also admonished that “[l]egislative intent is to be ascertained whenever possible from the natural and ordinary meaning of the language used, without forced or subtle

construction that would limit or extend the meaning of the statute.” *Lipscomb v. Doe*, 35 S.W. 3d 840 (Tenn. 2000) Giving effect to the plain language of the statute in its entirety means that Wamp can terminate Taylor under Section 5-6-112(1) *only* “if there is no county attorney.” At the time that Wamp attempted to terminate Taylor it is undisputed that Taylor was the County Attorney, and, by resolution of the County Commission, remains County Attorney. Therefore, Section 5-6-112(1) does not authorize Wamp to terminate Taylor.

Similarly, the plain terms of section 5-6-106(c) do not provide a basis for Wamp’s claimed authority to terminate Taylor. Section 5-6-106(c) provides: “*Except as otherwise provided by general law . . . the county mayor shall appoint . . . department heads . . . . Such appointments and confirmations are not applicable to employees appointed by other elected county officials.*”(emphasis added) By its own terms, therefore, this section confirms that it is subject to more specific statute or other laws relating to the appointment of department heads, codifying a principle of statutory construction that it is well-recognized under Tennessee law that “[S]pecific statutory language will control over a general conflicting statutory provision.” *State v. Turner*, 193 S.W. 3d 522, 526 (Tenn. 2006) See also, *Ray v. Madison County, Tennessee*, 536 S.W. 3d 824 (Tenn. 2017) Giving effect to the specific language of section 5-6-112(1) over the general language of section 5-6-

106(c), Wamp's attempted termination is ineffective because it is undisputed that Taylor was and is the county attorney by Commission resolution.

Moreover, Section 5-6-106(c) does not apply by its own terms. Taylor was appointed by "other elected county officials" – namely, the County Commission. The Tennessee Attorney General in Opinion 14-28 has opined that "[w]here a county commission has hired an employee in the valid exercise of its authority, a county mayor may not unilaterally terminate that employee unless expressly authorized." Here, there is obviously no express authorization. Indeed, Taylor's contract was affirmed by the action of the County Commission which reaffirmed that contract by a vote of 11-0 and overrode Wamp's veto or it by a vote of 11-0.

## **2. Taylor Was Not an At-Will Employee**

Finally, realizing that he has no statutory right to do what he has attempted to do, Wamp tries to assert Taylor was an at-will employee under the Hamilton County Employee Handbook, subject to termination by him at any time because of the provisions of Section 2.03 that Handbook. That Section does provide that an employee of Hamilton County without a contract is an at-will employee, but it also goes on to say that no contract is created between the employee and the county, nor shall any provision of the Handbook be so construed. As the Court of Appeals held in *Rose v. Tipton County Public Works Department*, 953 S.W.2d 690 (Tenn. Ct. App. 1997), "unless an employee handbook contains such guarantees or binding



commitments, the handbook will not constitute an employment contract.” *Id.*, at 692. The *Rose* court went on to state further, “In order to constitute a contract, however, the handbook must contain specific language showing the employer’s intent to be bound by the handbook’s provisions.” *Id.*; see also *Keller v. Casteel*, 602 S. W. 3d 351, 360 (Tenn. 2020) (citing *Rose* and noting “there ‘is a high standard for establishing the existence of an employer’s specific intent to be bound by the terms of an employee handbook’”) (quoting *Brown v. City of Niota*, 214 F. 3d 718, 721 (6<sup>th</sup> Cir. 2000)). Hence, Wamp’s arguments under the Hamilton County Employee Handbook are totally groundless that he has the authority to terminate Taylor for good cause, no cause, or any cause, since the Handbook states it has no application.

### **3. Wamp Failed to Join an Indispensable Party Pursuant this Court’s Order**

This Court’s order of December 13, 2022, provided that Commissioners “must be joined to this litigation as a Counter-Defendant.” In response to that Order, Wamp simply added the Commissioners to the caption of the lawsuit without naming them as a party in the counterclaim. Rule 10(b) provides that a “party must state its claims or defenses in numbered paragraphs.” Wamp did not do that. Nor was Rule 8 of the Tennessee Rules of Civil Procedure complied with. That rule requires a claim for relief to be pled. Since the counterclaim has contained

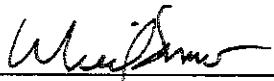
no allegations or claim for relief against the Commissioners, Wamp has not complied with the order of this Court.

### CONCLUSION

For the foregoing reasons the motion for judgment on the pleadings should be granted.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Memorandum electronically and by mail on the following on January 3, 2023.

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