

IN THE SUPERIOR COURT OF ROCKDALE COUNTY
STATE OF GEORGIA

SONS OF CONFEDERATE
VETERANS, MAJOR GENERAL
JOSEPH WHEELER CAMP NO. 863,
Plaintiff,

CIVIL ACTION

File No. 2020-CV-1705

OZ NESBITT, Sr., Chairman of
ROCKDALE COUNTY,
GEOGIA COMMISION in his
official capacity and individually,

Defendant.

PLAINTIFF'S COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

NOW COMES the Sons of Confederate Veterans, Major General Joseph Wheeler Camp No. 863 ("Plaintiff"), by and through the undersigned attorneys, and hereby propounds upon Oz Nesbitt, Sr., Chairman of Rockdale County Georgia Commission both in his official capacity and individually ("Defendant"), and upon this Honorable Court, Plaintiff's Complaint for Damages and Injunctive Relief ("Complaint"), showing to this Honorable Court the following:

I. INTRODUCTION

1. Defendant has ordered removed the Confederate Monument from its historic location in downtown Conyers in violation of O.C.G.A. § 50-3-1(b).

II. PARTIES

2. Plaintiff is an organization of people who honor the memories and legacies of their forefathers who fought for freedom during the War Between the States. Plaintiff has standing to bring this Complaint, pursuant to O.C.G.A. 23-3-2, 23-4-20, and 50-3-1(b)(5) and other applicable law.

3. Defendant, acting individually, without the authority of the Rockdale County Board of Commissioners and under the color of law in his apparent authority as Chairman of the Rockdale County Board of Commissioners, violated O.C.G.A. § 50-3-1 by removing the Confederate Monument from its place of honor and prominence in downtown Conyers.

4. Defendant has announced his intention to further violate O.C.G.A. § 50-3-1(b)(7) by the placement of the Confederate Monument in the Conyers City Cemetery.

III. JURISDICTION AND VENUE

5. This Court enjoys subject matter jurisdiction for the instant civil action pursuant to Section I, Article IV, of the Georgia Constitution and O.C.G.A. § 23-1-1 and § 50-3-1(b)(5).

6. This Court enjoys personal jurisdiction over Defendant because the Defendant is a resident of Rockdale County and serves as Chairman of the Rockdale County Commission. O.C.G.A. §§ 50-3-1(b)(1)(A), 50-3-1(b)(1)(C), and 50-3-1(b)(5).

7. Venue is proper with this Court because the threatened injuries occurred in the County of Rockdale and the City of Conyers. The case at bar seeks injunctive relief, and Defendant is a resident of Rockdale County. See O.C.G.A. § 9-10-30.

IV. STATEMENT OF FACTS

8. Acting through its officers, as defined by O.C.G.A. § 50-3-1(b)(1)(C), Defendant has unlawfully removed from its place of honor in downtown Conyers the Confederate Monument that has stood in that location since 1913.

9. Said monument satisfies the statutory definition of a monument within the meaning of O.C.G.A. § 50-3-1(b)(1)(B).

10. Defendant's unlawful removal of such monument is contrary to law and has inflicted upon Plaintiff immediate and irreparable injury, for which monetary compensation would not alone be sufficient.

12. Due directly and proximately to Defendant's unlawful conduct of removing the Confederate Monument, Plaintiff has suffered injury to its rights and dignity.

V. CAUSES OF ACTION

COUNT 1

STATUTORY VIOLATION OF O.C.G.A. 50-3-1(b)

12. Plaintiff incorporates by reference as if each is fully set forth herein all prior paragraphs of this Complaint.

13. Defendant, without authority, unlawfully has removed, concealed, and obscured the Confederate Monument in violation of O.C.G.A. § 50-3-1(b)(2)-(4).

14. As carried out thus far and as further threatened, Defendant's removal of said monument has caused Defendant to be liable to Plaintiff for general damages, including treble the amount of the full cost of repair or replacement of the removed monument; for exemplary damages for the unauthorized removal of the monument in a manner contrary to law, including punitive damages for the purpose of deterring Defendant and similarly situated state actors from engaging in such conduct in the future; and for attorneys' fees and court costs expended by Plaintiff in this proceeding, all due to Defendant having injured Plaintiff by violating O.C.G.A. § 50-3-1(b)(4), and all in amounts to be proven with greater specificity at trial.

WHEREFORE, Plaintiff prays that this Honorable Court will award Plaintiff a money judgment against Defendant for general damages, exemplary damages, attorneys' fees, and court costs, all in amounts to be determined by the factfinder.

COUNT 2 INJUNCTIVE RELIEF

15. Plaintiff incorporates by reference as if each is fully set forth herein all prior paragraphs of this Complaint.

16. The Court can and should issue a temporary restraining order, preliminary injunction, and permanent injunction against Defendant whereby Defendant is ordered not to move the Confederate Monument except to restore it to its place of honor in downtown Conyers. *Samuel v. Herrick Memorial Hospital*, 201 F.3d 830, 833 (6th Cir. 2000) (describing factors to be considered when deciding whether injunctive relief should be awarded); *Solid Rock Foundation v. Ohio State University*, 478 F. Supp. 96 (S.D. Ohio 1979) (using Sixth Circuit and Supreme Court case law to decide whether a preliminary injunction should issue for a First Amendment-related controversy).

17. Plaintiff is being threatened by an injury for which Plaintiff has no adequate legal remedy. See O.C.G.A. §§ 23-1-4, 23-1-5; *Dana Corp. v. Celotex Asbestos Settlement Trust*, 251 F.3d 1107, 1118 (6th Cir. 2001).

18. Plaintiff has a substantial likelihood of success on the merits of Plaintiff's O.C.G.A. § 50-3-1 claim in that Defendant's actions to date and proposed actions in the future constitute a clear violation of state law.

19. Plaintiff will suffer irreparable harm in the form of the unlawful removal of a protected monument should the Court not grant Plaintiff injunctive relief. See O.C.G.A. §§ 23-1-2 and 23-1-3.

20. The award of injunctive relief to prohibit Defendant from removing said monument will not cause Defendant to suffer substantial harm because Defendant is prohibited by law from removing said monument and from placing it in a cemetery in violation of O.C.G.A. § 50-3-1(b)(7).

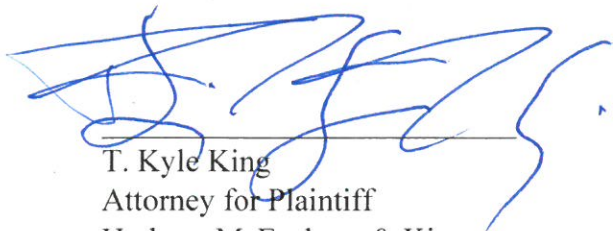
21. The award of injunctive relief to prevent Defendant from removing said monument and from placing it in a cemetery will serve the public interest, because it is in the public's interest for the law to be honored and not violated by governmental actors. See, e.g., O.C.G.A. § 23-4-20; *DeKalb Co. Sch. Dist. v. Ga. State Bd. of Educ.*, 294 Ga. 349, 353(1a) (2013).

22. Plaintiffs should not be required to post bond if the Court grants Plaintiff's request for a temporary restraining order or preliminary injunction because said requested relief is undeniably in the public interest.

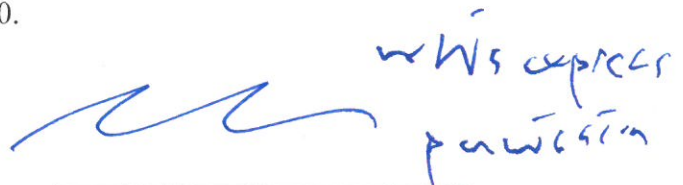
23. Plaintiff's request for a temporary restraining order and preliminary injunction is time-sensitive because the actual removal of said monument and the threatened placement in a cemetery could be undertaken by Defendant at any time.

WHEREFORE, Plaintiff prays that this Honorable Court will award Plaintiff a temporary restraining order, preliminary injunction, and permanent injunction whereby Defendant is prohibited from moving the Confederate monument except to restore it to its rightful location and prohibiting it from placement in a cemetery, now or in the future, in violation of state law.

Respectfully submitted this the 7th day of July, 2020.



T. Kyle King
Attorney for Plaintiff
Hodges, McEachern & King
2002 Commerce Drive North, Suite 300
Peachtree City, Georgia 30269
(770) 473-0072
kyle@hmklawoffice.com
Georgia Bar No. 421382



with express
permission

Daniel A. Coleman
Attorney for Plaintiff
8735 Jenkins Road
Winston, Georgia 30187
(770) 333-0800
dancofin@yahoo.com
Georgia Bar No. 177425