

IN THE CIRCUIT COURT OF DODDRIDGE COUNTY, WEST VIRGINIA

**CHARLES PATRICK HEASTER,
Individually and as the
Representative of the
100 qualified petitioners,**

Petitioners,

vs.

Civil Action No. 16-C-57

GREGORY L. ROBINSON,

Respondent.

Final OPINION and ORDER Following Evidentiary Hearing

The underlying case is a removal action brought pursuant to W.Va. Code § 6-6-7 (Repl. Vol. 2015).¹ An evidentiary hearing on the merits of the petition was held in the within matter on the 18th day of April, 2017, and at that time there appeared the petitioner, Charles Patrick Heaster in person (collectively the “petitioners”), by and through counsel Greg Schillace; and the respondent, Gregory L. Robinson² (“Commissioner Robinson”) through counsel, Duane Ruggier II, Drannon L. Atkins, and Joseph F. Shaffer; with the Honorable Jacob E. Reger, Patrick N. Wilson and Jack Alsop, presiding. Whereupon, the petitioner did call as witnesses Beth A. Rogers, Clerk of the Doddridge County Commission and Robert Beamer who were both duly

¹ W.Va. Code § 6-6-7(a) states, in part: [a]ny person holding any county, school district or municipal office, including the office of a member of a board of education and the office of magistrate, the term or tenure of which office is fixed by law, whether the office be elective or appointive, except judges of the circuit courts, may be removed from such office in the manner provided in this section for official misconduct, malfeasances in office, incompetence, neglect of duty, or for gross immorality or for any of the causes or on any of the grounds provided by any other statute.

² The record reflects that Commissioner Robinson did not appear in person for the hearing; however, despite the petitioner’s objections to his nonappearance because they desired to call him as a witness, the Court finds and the petitioner further admits that Commissioner Robinson was not subpoenaed by either party. As such, this Court finds the burden of proof is upon the petitioner and absent a subpoena to secure his presence, Commissioner Robinson was under no legal duty to appear.

sworn and subject to cross examination, thereafter, the petitioners did rest. The respondent then did move for a direct verdict of dismissal, arguing the petitioners had failed to meet their burden of proof on charges alleged. Whereupon, after hearing arguments of counsel, the Court after due consideration of the facts of the case, evidence presented and applicable law do **FIND** the petitioners have failed to meet their burden of proof and do likewise **DENY and DISMISS** the petition to remove Commissioner Robinson. The Court further informed the parties this written decision in support of said ruling would follow.

I. FINDINGS OF FACT

1. The Court takes judicial notice of the record and all prior proceedings in this case, in addition to its rulings with respect thereto.
2. This is a removal petition brought pursuant to West Virginia Code § 6-6-7 (Repl. Vol. 2015), wherein the petitioners seek to remove Commissioner Robinson from his duly elected seat to the Doddridge County Commission.
3. Commissioner Robinson was elected by the registered voters of Doddridge County in the November 2012 General Election to a full six-year term on the Doddridge County Commission.
4. Petitioners allege multiple actions on the part of Commissioner Robinson constitute official misconduct warranting his removal from elected office.
5. The petition states that during a Commission meeting on or about April 19, 2016, the Commission approved with a vote of 2-1, the grant of fifty thousand dollars (\$50,000) to the Doddridge County Emergency Medical Services (“DCEMS”).³ Then Commission President Robinson voted against the grant of funds and the County Clerk executed Check Number 17777 for the approved amount on or about April 20, 2016, and the check was sent to DCEMS. Subsequent thereto, it is alleged that Commission President Robinson acted without authority

³ DCEMS is now defunct and has ceased operations.

and in contradiction of the majority vote of the Commission and the laws of State of West Virginia by directing the County Clerk to stop payment on the aforementioned funds.

6. The petition also alleges that Commissioner Robinson engaged in further official misconduct by attending meetings of the Doddridge County Ambulance Authority (the “DCAA”) and uses his elected position as Commissioner to unlawfully interfere in the deliberations and decisions of the DCAA, including but not limited to the wrongful discharge of duly appointed board members.

7. The remaining grounds in the petition allege that Commissioner Robinson, in his official capacity, has committed further official misconduct in that he has engaged in or influenced the wrongful and wasteful expenditure of Commission funds; continues to engage in deficit spending and support of the DCAA; as well as he has facilitated the purchase of equipment for the DCAA without first engaging in the competitive bid process in violation of State law.

8. An evidentiary hearing was held on the petition on the 18th day of April, 2017. From that hearing the Court makes the following factual findings:

Testimony of County Clerk Beth A. Rogers

9. Clerk Rogers indicated that as part of duties as County Clerk her office is responsible for maintaining a record of the minutes and agendas from meetings of the Doddridge County Commission (the “Commission”).

10. When asked about funding requests by the Doddridge County Ambulance Authority (the “DCAA”) for the purchase of equipment and whether bids were solicited for those purchases, Ms. Rogers testified that she could not recall if she had received any bids or if they would be contained in the minutes from previous Commission meetings. (Petitioners’ Exhibit #13).

11. Clerk Rogers stated that she prepared the agenda for the Commission meeting on April 19, 2016, that Commissioner Sandora instructed her to place in New Business on the meeting agenda a line item regarding the DCEMS, to wit: “k. DCEMS—Discussion of Finances.” Ms. Rogers stated she put the line item on the agenda verbatim from Commissioner Sandora. She also agreed that there was no indication in that description or elsewhere within those meeting minutes to suggest the Commission was going to vote on awarding DCEMS funds.

12. Clerk Rogers stated that while her office is charged with preparing checks for payments approved by the Commission, a stamp of her signature is used to endorse the instruments and that her staff is responsible for preparing the checks for payment.

13. Clerk Rogers indicated that she is aware that a stop payment was issued on the Check No. 17777. This check was issue following a majority of the Commission approving payment of fifty thousand dollars (\$50,000) to DCEMS to assist the agency with their dire financial situation. However, she further testified that she was not at work the day the order to stop payment was made. (Petitioners’ Exhibit #16).

14. It is undisputed that Commissioner Robinson, who was then serving as Commission President ordered the stop payment on the check.

15. She further testified that the Commission voted to dissolve the Board of Directors for the DCAA on February 7, 2017, and that to her knowledge the Board of Directors had not been re-established but the DCAA continues in operation. (Petitioners’ Exhibit # 17).

Testimony of Robert Beamer

16. Robert Beamer was appointed by the Commission to DCAA Board of Directors following a special Commission meeting on or about December 4, 2013, by a vote of 2-1. Commissioner Robinson voted in favor of the appointment. (Petitioners’ Exhibit # 9).

17. Mr. Beamer served on the Board until he was removed by majority vote of the Commission at a meeting held on or about June 3, 2014. Mr. Beamer stated that Commissioner Robinson was behind his removal. (Petitioners' Exhibit #12).

18. Mr. Beamer testified that he and Commissioner Robinson had a poor working relationship. Mr. Beamer indicated that Commissioner Robinson regularly attended DCAA meetings and was like a "hammer," because Mr. Beamer stated Commissioner Robinson repeatedly interjected his opinion into DCAA matters.

19. Mr. Beamer stated the friction in his relationship with Commissioner Robinson escalated over purported negotiations between the DCEMS and DCAA and Mr. Beamer's voiced displeasure over the Commission's involvement, as well as the DCAA Board of Directors not being included in those discussions.

20. Mr. Beamer indicated that when he was appointed to the Board, DCAA was in a financial crisis. Mr. Beamer further indicated he proposed to his fellow Board members that he be given copies of all the DCAA's bills and he would compile the data to help the Board formulate a budget to get a better handle on the DCAA's expenditures. Mr. Beamer stated the Board approved this measure; however, he was denied access to those Commission records. Mr. Beamer believed Commissioner Robinson was responsible for his inability to access the records.

21. Mr. Beamer testified he understood his tenure on the Board was at the will and pleasure of the Commission. He further admitted that Commissioner Robinson indicated during a Commission meeting that the DCAA Board of Directors requested Mr. Beamer be removed.

22. After he was removed from the Board by the Commission, Mr. Beamer stated he wrote a letter to the Commission and presented the same and a subsequent Commission meeting wherein he detailed concerns over the DCAA and DCEMS merger, in addition to his belief that

Commissioner Robinson was using his elected office to subvert the authority of the DCAA Board of Directors.

23. Mr. Beamer testified that he did not know the proper procedure for removal of DCAA Board members, however he further stated he hoped his removal was done properly.

II. STANDARD OF REVIEW

As previously set forth, this is a removal petition brought pursuant to the provisions of West Virginia Code § 6-6-7 (Repl. Vol. 2015). This statute provides that:

[a]ny person holding any county, school district or municipal office, including the office of a member of a board of education and the office of magistrate, the term or tenure of which office is fixed by law, whether the office be elective or appointive, except judges of the circuit courts, may be removed from such office in the manner provided in this section for **official misconduct**, malfeasance in office, incompetence, neglect of duty, or gross immorality or for any of the causes or on any of the grounds provided by any other statute.”(emphasis added).

W.Va. Code § 6-6-7(a) (Repl. Vol. 2015). The petitioners allege that Commissioner Robinson engaged in “official misconduct” which warrants his removal from the office as a Doddridge County Commissioner. The term ‘official misconduct’ as used in the aforementioned statutory language is defined as “any unlawful behavior by a public officer, in relation to the duties of his office, willful in character. *Daugherty v. Davis*, 145 W.Va. 592, 116 S.E.2d 131 (1960), citing *Kesling v. Moore*, 102 W.Va. 251, 135 S.E. 246 (1926). Notably, the burden of proof in these causes of action lies with the petitioner to prove the charges by satisfactory proof and a finding of such proof may only be established if proven by clear and convincing evidence. *Smith v. Godby*, 154 W.Va. 190, 174 S.E.2d 165 (1970). Further, the material charges contained in a petition for the removal of county, district and municipal officers must be proved, regardless of whether denied by answer or not. *Hunt v. Allen*, 131 W.Va. 637, 53 S.E.2d 509 (1948).

To state it in terms of the present case, the burden of proof was on the petitioners to prove by clear and convincing evidence the charges against Commissioner Robinson and that such charges constitute 'official misconduct.' However, as previously noted at the conclusion of the evidentiary hearing the Court did find that the petitioners had failed to meet their burden of proof on each charge contained in their petition. The reasons for the Court's ruling are more fully explained below.

III. DISCUSSION

While the petition sets forth multiple charges against Commissioner Robinson, these allegations can be divided and summarized as follows: (1) DCEMS funding and the subsequent stop payment order; (2) Commissioner Robinson's involvement with the DCAA; and (3) Commissioner Robinson's improper use of Commission funds. In order to succinctly address and fully dispose of the charges brought against Commissioner Robinson and the Court's rulings with respect thereto, the Court will address the charges, as summarized above, respectively in seriatim.

DCEMS Funding and the Subsequent Stop Payment Order

The petitioners first allege Commissioner Robinson committed official misconduct when he ordered the stop payment on a check awarding fifty thousand dollars (\$50,000) in funding to the DCEMS, funding that was approved by a 2-1 vote of the Commission at a meeting held on April 19, 2016. In petitioners' view, Commissioner Robinson, who was Commission President at the time, acted without authority and against the will of the majority of the Commission by directing payment on the negotiable instrument be stopped. It is also alleged that Commissioner Robinson's action was willful and intentional retaliation because he was voted in opposition to the funding.

In support of this allegation, the petitioners relied on the testimony of Beth A. Rogers, Clerk of the Doddridge County Commission and multiple exhibits that were admitted without objection. However, this Court finds that even when the petitioners are afforded the upmost deference allowed by law, the testimony adduced and the exhibits admitted fail to establish satisfactory proof of a cognizable ground for relief of removal by clear and convincing evidence. While Clerk Rogers was questioned at length by the petitioner during direct examination, her testimony was factually sparse in nature, the gravamen of which was entrenched in the constitutional and statutory duties of her office with regards to the County Commission, viz., keeping of minutes, preparing of agendas and preparing checks for payment of approved expenditures. Furthermore, when asked about specific actions of Commissioner Robinson and the Commission with respect to the DCEMS funding at issue herein, Clerk Rogers consistently stated that she could not recall, lacked specific knowledge, or that she did not remember. With respect to the exhibits that were admitted without objection, the Court finds that collectively, they are at best a muddled assortment of meeting agendas and minutes that while they represent actions taken by the Commission as a whole, fail in all respects to establish a *prima facie* case of willful or unlawful official misconduct on the part of Commissioner Robinson.

While it is uncontroverted that Commissioner Robinson did order stop payment on the check, the Court is again mindful that the burden of proof in this proceeding was upon the petitioners to prove the charge of official misconduct by clear and convincing evidence. Therefore, even when viewing the aforesaid evidence in a light most favorable to the petitioners and affording it the most weight allowed by law, this Court hereby finds and concludes the totality of the evidence presented inexorably fails to prove that the actions of Commissioner Robinson in this respect were willful, unlawful or otherwise constitute official misconduct under

W.Va. Code § 6-6-7 (Repl. Vol. 2015) as a matter of law. For these reasons, the petitioners' claim in this regard is hereby denied.⁴

Commissioner Robinson and the DCAA

The next charge set forth by the petitioners rests on Commissioner Robinson and his involvement with the Doddridge County Ambulance Authority. The petitioners charge that he regularly attended DCAA meetings, interjected his opinion into the DCAA Board of Directors' decision making process, used his elected office to usurp the authority of the DCAA and its Board of Directors; Commissioner Robinson sought appointment to the DCAA immediately upon taking office as a Commissioner; and unlawfully removed members from the Board and dissolved the existence of the Board of Directors as part of the DCAA in its entirety. In the petitioners' view this conduct amounts to official misconduct warranting the removal of Commissioner Robinson from elected office.

To support these charges, the petitioner relied upon the testimony of former DCAA Board of Directors member, Robert Beamer. Mr. Beamer was previously appointed by a 2-1 majority vote of the Commission to the DCAA Board of Directors on or about December 4, 2013, to fill the unexpired term of a former member and that he remained on the Board until removed by a majority vote of the Commission on or about June 3, 2014. During direct examination, Mr. Beamer was an outspoken critic of Commissioner Robinson, indicating that

⁴ The respondent argued in prior motions and hearings before this Court that his actions were solely because Commissioner Robinson was acting under the belief that the posted meeting agenda's description of "DCEMS—Discussion of Finances" was not in compliance with the notice requirements under the Open Governmental Proceedings Act, W.Va. Code § 6-9A-1, *et seq.* and therefore, the approval of the funding was illegal, exposing the Commission to potential liability. While, this defense was not raised at the evidentiary hearing, the Court finds the same of no moment, in that the evidence adduced by the petitioners in their case in chief failed to set forth a *prima facie* case, let alone prove the charges by clear and convincing evidence as a matter of law and therefore, dismissal of the petition was proper.

their working relationship deteriorated over Commissioner's Robinson's involvement with the DCAA. Mr. Beamer testified that Commissioner Robinson regularly attended the DCAA meetings and that he would give the Board his opinion as to what action(s) to take; however the Court finds no evidence on the record that even if this conduct were true, that Commissioner Robinson's interjected opinions in any manner, changed or affected any decision of the DCAA Board of Directors.

Mr. Beamer further testified that despite approval of DCAA Board members, Commissioner Robinson prevented him from developing a solution to the DCAA's financial crisis by denying him access to Commission and DCAA business records; nevertheless, this Court again finds the petitioners failed to produce any evidence to support this assertion. The West Virginia Supreme Court of Appeals has on more than one occasion commented that "a skeletal argument, really nothing more than an assertion" and "although briefs are liberally construed in determining issues presented for review, issues...mentioned only in passing but are not supported with pertinent authority, are not considered." See e.g. *State v. LaRock*, 196 W.Va. 294, 302, 470 S.E.2d 613, 621 (1996). The Court finds such an analysis equally applicable in the present case. While petitioners want this Court to accept the testimony of Mr. Beamer without pause, such cannot be done. Mr. Beamer was forthright in his animosity towards Commissioner Robinson, including his steadfast belief that he was responsible for his removal from the DCAA Board of Directors. Notwithstanding the testimony of Mr. Beamer, the petitioners produced no other evidence to support these charges. Namely, noticeably absent from the record is testimony of other DCAA Board members to corroborate Mr. Beamer's testimony; minutes or other credible documentation from proceedings of the DCAA Board of Directors to may have assisted in establishing official misconduct as charged on the part of Commissioner Robinson. As

previously noted, an argument based on speculation and vagueness is not evidence and the degree of proof imposed upon the petitioners in this case is clear and convincing evidence. As such, based on the scant evidence adduced in support of these charges, this Court is compelled to conclude that the petitioner has failed to set forth satisfactory proof that established Commissioner's Robinson's involvement with the DCAA constituted clear and convincing evidence of official misconduct as a matter of law.

The petitioners opine that Commissioner Robinson committed official misconduct by seeking to be appointed to the DCAA Board of Directors immediately after taking office as a Doddridge County Commissioner. The Court finds this argument without merit because W.Va. Code § 7-15-5 expressly authorizes the appointment of officials or members of the governing body responsible for the ambulance authority. Therefore, this Court finds Commissioner Robinson's request in that regard to be lawful and in no way an act of official misconduct as a matter of law.

Next, petitioners aver that Commissioner Robinson took willful and unlawful action, constituting official misconduct by removing Mr. Beamer from the DCAA Board, in addition to the subsequent dissolution of the Board in its entirety. In support of this position, the petitioners again relied on the testimony of Mr. Beamer. While Mr. Beamer testified that he believed Commissioner Robinson was responsible for his removal from the Board, Mr. Beamer also agreed that during the meeting upon which he was removed, it was noted by Commissioner Robinson that the DCAA Board had requested Mr. Beamer be removed. Absent this testimony, the petitioners presented no further evidence to support their claim that Commissioner Robinson's action in this regard was official misconduct and in turn, have consequently failed to meet their burden of proof. This Court would further note that the petitioners' claim in this

regard is further inhibited by the fact that a majority vote is required for the Commission to take official action and thus, Commissioner Robinson could not remove Mr. Beamer unilaterally or be solely responsible for Mr. Beamer's removal. The record reflects that Mr. Beamer was removed from the DCAA Board by a majority vote and therefore, this Court hereby finds that the petitioners have again failed to establish official misconduct on the part of Commissioner Robinson as a matter of law.

The final DCAA ground set forth by the petitioners is that Commissioner Robinson committed official misconduct by willfully and unlawfully using his elected office to circumvent and usurp the authority of the DCAA by dissolving its Board of Directors. Again, this Court notes that the Commission could take no official action without majority vote of the Commissioners. In this case, the record clearly reflects that a majority of the Commission did approve removal of all DCAA Board members and dissolution of the Board in its entirety, passing a resolution proclaiming the same. The position set forth by the petitioners is again that Commissioner Robinson, alone is responsible for these actions; however, as this Court has previously noted such a short-sided position is completely unsupported by the law of this State and therefore cannot survive as a matter of law.

Improper Use of Commission Funds

The petitioners further charge Commissioner Robinson with improper use of tax payer monies and Commission funds. Specifically, they argue that Commissioner Robinson continues to support deficit spending by funding the DCAA, approving funds that benefit non-residents of Doddridge County, and approving expenditures for the DCAA without first soliciting competitive bids as required by W.Va. Code § 7-15-7 for purchases over ten thousand dollars (\$ 10,000). To bolster support these charges, the petitioners relied upon the testimony of Clerk

Rogers and Mr. Beamer. However, when questioned regarding Commission expenditures and the bid process, Clerk Rogers indicated that her office did not solicit bids nor handle the bidding process. She further testified that she did not have any specific knowledge of whether the Commission sought bids prior to making certain purchases for the DCAA over the statutory limit. Likewise, the only testimony on this issue given by Mr. Beamer was that he believed the Commission approved equipment purchases for the DCAA, in excess of ten thousand dollars. (\$10,000).

Considering the evidence presented on this issue, this Court is of the opinion that the petitioners have again fallen significantly short of their burden of proof. Albeit for the testimony of Clerk Rogers and Mr. Beamer, the only other evidence presented by the petitioners was an approved budget request totaling approximately \$38,878 for the DCAA to purchase equipment. Noticeably absent however, is any evidence that (1) competitive bidding did not take place or (2) that Commissioner Robinson committed an unlawful or willful act of official misconduct. Simply put, Clerk Rogers testified that her office did not solicit or handle competitive bids and she likewise had no knowledge of whether the Commission did or did not seek bids and Mr. Beamer's testimony was even less fruitful for the petitioners. Moreover, the petitioners failed to produce any evidence to support their claims regarding deficit spending or spending for the benefit of non-residents. While the petitioners again attempt to single out Commissioner Robinson alone for these actions, the Court again notes that a majority vote is required for Commission action. As such, there is no evidence on the record to support a finding by clear and convincing evidence of official misconduct by Commissioner Robinson. Therefore, this claim must also be denied.


IV. CONCLUSION

Based on the foregoing it is accordingly **ADJUDGED** and **ORDERED** that this instant removal petition be and is hereby wholly **DENIED** as a matter of law. This case is further **DISMISSED** and **STRICKEN** from the active docket of the Court.

The parties' objections and exceptions are noted.

The Clerk shall forthwith cause certified copies of this Order to be sent to all counsel of record.

ENTERED this 23 day of May, 2017.



JACK ALSOP, CHIEF JUDGE

I hereby certify that the annexed instrument is a true and correct copy of the original on file in this office.
Attest: MICHELE D. BRITTON
Circuit Court Doddridge County of West Virginia



Clerk