

IN THE DISTRICT COURT OF BOURBON COUNTY, KANSAS

SUSAN E. WALKER)
Bourbon County Clerk,)
)
Plaintiff,)
)
v.) Case No. BB-2026-CV-000048
)
JAMES CRUX)
Bourbon County Attorney,)
)
Defendants.)
)

Pursuant to K.S.A. Chapter 60

**PLAINTIFF’S RESPONSE TO DEFENDANT’S MOTION FOR JUDGMENT
ON THE PLEADINGS**

COMES NOW, the Plaintiff Susan E. Walker, Bourbon County Clerk, (“Plaintiff”) by and through legal counsel, and respectfully responds to the Motion to for Judgment on the Pleadings filed by Defendant James Crux (“Defendant”). In response and in support of her response, Plaintiff offers the following:

Introduction

Like Defendant, Plaintiff recognizes the greatness of our past presidents and recognizes they and the founders’ wisdom in preserving and protecting the rights of the people to decide who governs. See Amended Petition, generally. The great President John F. Kennedy once quoted a wise man when he said, “an error doesn’t become a mistake until you refuse to correct it.” In this case, the facts are undisputed Plaintiff recognized an error and corrected it. Defendant’s error of not independently reviewing the second proposed recall petition (“Recall Petition”) presented to him and allowing a legally insufficient recall petition to circulate has yet to be corrected.

Plaintiff has read the statutes and cases relevant to these proceedings and has no disagreements with recall law as interpreted by the courts. *Id.* This case is not about the earthmoving principles of America's or Kansas's founding or its past presidents. Plaintiff presents the Court with two claims: (1) Defendant failed to perform his statutory duty when he did not independently review the Recall Petition for sufficiency; and (2) on its face, the Recall Petition is legally insufficient for circulation, certification or election. If the Court finds either of Plaintiff's claims true, it should find the Recall Petition invalid and enjoin its utility henceforth.

Standard of Review

“A motion for judgment on the pleadings under 60-212(c), filed by a defendant, is based upon the premise that the moving party is entitled to judgment on the face of the pleadings themselves and the basic question to be determined is whether, upon the admitted facts, the plaintiffs have stated a cause of action.” *Clear Water Truck Co. v. M. Bruenger & Co.*, 214 Kan. 139, 140, 519 P.2d 682, 684 (1974). “The motion serves as a means of disposing of the case without a trial where the total result of the pleadings frame the issues in such manner that the disposition of the case is a matter of law on the facts alleged or admitted, leaving no real issue to be tried.” *Id.* citing Gard, Code of Civil Procedure Annotated, s 60-212(c), p. 55. “The motion operates as an admission by movant of all fact allegations in the opposing party's pleadings.” *Id.* That is, the court accepts all factual allegations of the non-moving party as true when evaluating the motion and judges whether the plaintiff has a case.

Arguments

Accepting Plaintiff's factual allegations as true, Defendant failed to perform his

statutory duty to independently review the Recall Petition therefore the Recall Petition is invalid.

Plaintiff pled the statutory duties imposed on Defendant. AP ¶¶38-43. Plaintiff pled Defendant never notified her, in writing, that he reviewed the Recall Petition and never determined the sufficiency of the Recall Petition. AP ¶¶46-47. In his answer, Defendant avoids the factual allegation he did not analyze the Recall Petition. A ¶12. However, in his Motion for Judgment on the Pleadings, Defendant implicitly admits he did not independently review the Recall Petition. Defendant's Motion for Judgment on the Pleadings ("DM" or "Motion") p. 4-5. Rather, he frames the Recall Petition as a second and final draft of a Petition that was a work in progress. *Id.* As Defendant frames it, the formal procedure found in K.S.A. 25-4322(b) is optional. DM p. 4-6. As told in his Motion, Defendant need only generally follow the procedure. *Id.*

As made clear in the Amended Petition and other filings in this case, Plaintiff asks the Court to hold Defendant to the procedure as plainly written in K.S.A. 25-4322(b). Defendant invokes K.S.A. 25-4302 and *Unger v. Horn*, 240 Kan. 740 (1987) to shield him from his duty. But, liberally construing recall statutes to allow the voters to exercise their constitutional rights does not erase the Legislature's statutory procedures and Defendant's duty to perform it when called upon to do so. Said another way, no matter how liberally one construes the Recall of Elected Officials Act, the Act itself is not erased.

Defendant attempts to take shade under the substantial compliance doctrine, but that doctrine requires essential objectives be met. Plaintiff's stated facts, which

Defendant agrees to by virtue of his implicit agreement and for purposes of this Motion, are that Defendant never reviewed the Recall Petition. Since Defendant never reviewed the Recall Petition, he did not substantially meet the essential objectives of K.S.A. 25-4322(b). Since he never reviewed the Recall Petition, he met none of the objectives of K.S.A. 25-4322(b). As such, the substantial compliance doctrine is of no use to Defendant.

Defendant calls on K.S.A. 25-4302 to assist, saying the Legislature “did not mean to require strict compliance” in the Recall of Elected Officials Act. But, K.S.A. 25-4302 is meant to protect the voters’ choice from judicial interference. That is wholly different from the question of whether Defendant fulfilled his statutory duties under K.S.A. 25-4322(b). While the Legislature rightly protects voters, it does not protect County Attorneys who ignore their procedures.

For purposes of this motion, Defendant admits he erred by not independently reviewing the Recall Petition before allowing it to be circulated. He has refused to correct that error. Plaintiff respectfully asks the Court to recognize the error and stop it from becoming a mistake.

The specific grounds alleged in the Amended Petition are insufficient which makes the Recall Petition legally insufficient.

Plaintiff incorporates the entirety of her Amended Petition and arguments and authorities presented in her previous filings in this case herein by reference. Plaintiff specifically responds to the Motion as follows:

The Recall Petition lacks specificity.

Despite citing to specific statutes in his letter rejecting the first proposed recall

petition and laying out citations in his Motion that Plaintiff could respond to, Defendant argues the Recall Petition needs not specify what it is alleging with citations. As pled in the Verified Petition, there is no meaningful way for Plaintiff to respond to the entirety of K.S.A. Chapter 25 in 200 words, which she must be allowed to do. See *Reynolds v. Figge*, 28 Kan.App.2d 635 (Ct. of Appeals 2001), see also *Baker v. Gibson*, 22 Kan.App.2d 36 (Ct. of Appeals 1995). Since the Recall Petition alleges conduct that could implicate multiple different statutory duties, or none at all, the absence of any statutory reference wholly inhibits Plaintiff's ability to respond in any meaningful way.

Defendant's argument that Plaintiff should know the law does not relieve the requirement the Recall Petition must be stated with particularity.

The Recall Petition alleges misconduct.

Removing the words "misconduct and" from the first proposed petition to create the Recall Petition did not stop the recall committee alleging Plaintiff committed misconduct. The "specific grounds" language of the Recall Petition describe conduct that a reasonable signer or voter would interpret as a misconduct and could lead them to believe and vote to recall Plaintiff for misconduct.

The Recall Petition alleges disenfranchisement.

The Recall Petition alleging disenfranchisement invokes federal constitutional and Voting Rights Act violations, at least. An allegation of disenfranchisement could lead a reasonable petition signer or election voter to believe Plaintiff violated one of those laws, which would be misconduct. In his Motion, Defendant argues

disenfranchisement means something else but does not address how signers or voters would be able to discern the nuance or how Plaintiff would be able to respond to such a seriously loaded accusation as she is entitled to. See *Reynolds & Baker*.

If the Recall Petition alleges only one ground for recall as Defendant argues, the Court cannot “split the baby” if that ground fails.

Defendant argues there is only one ground in the Recall Petition: failure to perform duties prescribed by law. Defendant then argues if that ground fails, based on *Reynolds*, the Court should still allow the Recall Petition to circulate and be certified, but then choose from the certified petition only what is sufficient to post at the polling place.

An important distinction between the facts in *Reynolds* and the case at bar is when the challenge to the recall effort was brought in court. In *Reynolds*, the Petitioner presumably brought their challenge after sufficient signatures were already collected, as evidenced by county election official Figge being the defendant and the appeal being brought after the trial court instructed Figge to proceed to election on the recall petition. Since the recall process was at that stage, the Court of Appeals weighed the interests of a sufficient number of recall petition signers; found all the signers must not have disagreed with any of the issues on the recall petition, so they necessarily agreed with the ones that were legally sufficient; and determined “splitting the baby” would preserve both the signers’ interests and the law.

Here, Defendant argues there is only one issue presented in the Recall Petition. So, following *Reynold’s* reasoning, anyone who has thus far signed the Recall Petition must not have disagreed that Plaintiff failed to perform duties prescribed by law.

However, if the Court finds the Recall Petition insufficiently alleged Plaintiff failed to perform duties prescribed by law because of insufficiency, there is nothing left for the Court to salvage and post at the polling place. Therefore, if the Recall Petition is not legally sufficient, this Court may only decide whether to preserve Recall Petition signers' interests or the law. As pled and argued, the Recall Petition is not legally sufficient, so the Court must side with the law.

Proposed Intervenors should not be allowed to join the case.

Plaintiff incorporates the arguments presented in her Response to the Motion to Intervene herein by reference. Proposed intervenors are not required parties, have no right to intervene, and should not be allowed to permissively join or intervene.

Conclusion

Taking the Plaintiff's alleged facts as true, the Defendant failed to perform his statutory duties imposed by K.S.A. 25-4322(b) when he failed to review the Recall Petition for sufficiency and failed to notify necessary parties of a determination. The Recall Petition's specific grounds are legally insufficient. As pled, Plaintiff's Amended Petition lays out two clear counts and supports each claim with facts. The Court should allow the Petition to proceed to trial so it may fully examine the facts and law and render judgment on Defendant's inaction and incorrect sufficiency determination.

Based upon the foregoing facts, authorities and arguments, Plaintiff responds and respectfully asks the Court to DENY Defendant's Motion for Judgment on the Pleadings.

Respectfully Submitted By:

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ATTORNEY FOR THE PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on the file-stamped date above I filed a true and correct electronic copy of the above and foregoing document with the Clerk of the District Court via the Kanas Judicial Branch's e-Flex Filing System, which automatically provides electronic notification to participating parties.

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