

IN THE SUPREME COURT OF GEORGIA

CAMDEN COUNTY, GEORGIA,

CASE NO. S22A0837

Petitioner-Appellant,

v.

HONORABLE ROBERT C.
SWEATT, JR., in his official capacity
as Probate Court Judge of Camden
County, Georgia,

Respondent-Appellee,

and

JAMES GOODMAN, and PAUL A.
HARRIS,

Intervenors-Appellees.

BRIEF OF RESPONDENT -APPELLEE

**HONORABLE ROBERT C. SWEATT, JR.,
in his official capacity as Probate Court Judge of Camden County, Georgia**

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COMES NOW, HONORABLE ROBERT C. SWEATT, JR., in his official capacity as Probate Court Judge of Camden County, Georgia, Respondent-Appellee, and shows the Court as follows:

I.

SUPREME COURT JURISDICTION

The Supreme Court has exclusive appellate jurisdiction of this case as it

involves an issue of first impression regarding Home Rule for Counties and construction of the Constitution of the State of Georgia. Ga. Const. art. VI, § 6, ¶ II(1). (R-10, n. 1).¹ The Supreme Court has general appellate jurisdiction of this case as it involves extraordinary remedies. Ga. Const. Art. VI, § 6, ¶ III(5).

II.

JUDGMENT APPEALED

Camden County appeals from a March 4, 2022 Order of the Superior Court of Camden County denying its Petition for Writ of Prohibition and Other Relief against Honorable Robert C. Sweatt, Jr., in his official capacity as Probate Court Judge of Camden County, Georgia. (R-9-10).

III.

APPELLANT'S ENUMERATION OF ERROR

Camden County asserts that the Superior Court erred in denying its Petition for Writ of Prohibition and other Relief brought against Judge Sweatt alleging he exceeded his jurisdiction in validating a petition filed by electors pursuant to Art. IX, Sec. II, Par. I (b)(2) of the Georgia Constitution seeking a special election to repeal

¹Camden County's constitutional question before this Court, that the legislative power conferred by the county home rule constitutional provision on registered electors to amend or repeal local law by petition and referendum election is limited only to local acts, i.e., state law, was not ruled on in the Superior Court. (R-10, n. 1).

resolutions adopted by the county governing authority. The other relief sought against Judge Sweatt was the extraordinary writ of mandamus and declaratory judgment.² (R-5).

IV.

INTRODUCTION

Judge Sweatt is not a party in this appeal as a litigant. He is the duly elected probate judge of Camden County discharging the duties mandated on him by the Georgia Constitution which he swore an oath to follow to the best of his knowledge and ability.

The crux of this appeal involves construction of the Home Rule for Counties provision of the Georgia Constitution, specifically the petition and referendum process in Art. IX, Sec. II, Par. I(b)(2). Yet, the issues to be addressed in its construction extend beyond that raised by Camden County, principally that the legislative power conferred on the registered electors to amend or repeal local law by petition and referendum is limited only to those local acts, i.e., state law, applicable to its county governing authority. Rather, construction also must include the

²Sovereign immunity bars a request for declaratory relief against Judge Sweatt in his official capacity. GeorgiaCarry.Org, Inc. v. Bordeaux, 352 Ga. App. 399, 403, 834 S.E.2d 896, 900 (2019).

jurisdiction of the judge of the probate court of the county in determining the validity of the petition and the remedy of judicial review when the validity of the petition is in question as these issues are central to the extraordinary relief sought by Camden County against Judge Sweatt. The extraordinary writs of prohibition and mandamus are not merely ancillary to the Camden County's challenge to the validity of the referendum election as jurisdiction of the probate judge and judicial review are a part of the petition and referendum process. Construction of Art. IX, Sec. II, Par. I(b)(2) of the Georgia Constitution must answer all questions that brought this matter to the Supreme Court.

V.

ISSUES

A. Home Rule for Counties: Legislative Power Conferred on Electorate.

Camden County's challenge to the validity of the underlying referendum election pursuant to Art. IX, Sec. II, Par. I(b)(2) of the Georgia Constitution has not been the subject of judicial scrutiny. Order, Camden County v. Sweatt, et al., Case No. S22MO759 (S.Ct. March 10, 2022). (R-10, n. 1).

However, a referendum election pursuant to Art. IX, Sec. II, Par. I(b)(2) has been the subject of analysis and opinion by the Georgia Attorney General. In response to a request from the Secretary of State for an official opinion concerning

whether, under the home rule power of a county, electors may petition the probate judge to hold an election to amend zoning restrictions passed by the governing authority, the Attorney General determined that they could.

“The answer to your inquiry can be determined by a consideration of the home rule provisions of the State Constitution. Article IX, Sec. II, Par. I of the Georgia Constitution of 1983 provides, in pertinent part, as follows: . . . The Constitution sets up two alternatives by which a county can amend zoning regulations. Under the first alternative, the zoning resolution can be amended by another resolution or ordinance adopted by the governing authority during meetings as provided under subparagraph (b)(1). The other alternative deals with the initiation of a petition to be filed with the judge of the probate court. It is clear that under this latter alternative, the county's electors may petition the probate judge to hold an election to amend zoning resolutions passed by the governing authority. Based on the foregoing, it is my official opinion that under the home rule power of a county, electors may petition the probate judge to hold an election to amend zoning resolutions passed by the governing authority.”

1984 Ga. Op. Atty. Gen. 3 (1984).

Similarly, in answering another inquiry from the Secretary of State concerning whether the electors of a county can establish fire districts pursuant to the home rule provisions of the constitution the Attorney General looked to the powers delegated and opined:

“The county governing authority may establish fire districts by the enactment of an appropriate ordinance or resolution. Such ordinances or resolutions may be amended or repealed by the citizens of a county pursuant to Art. IX, Sec. II, Par. I(b)(2). However, the citizens of a county are not authorized to initiate ordinances and resolutions in the

first instance. The power of the citizens under home rule is limited to amendment or repeal of existing ordinances and resolutions and does not extend to the origination of such ordinances or resolutions.”

1985 Ga. Op. Atty. Gen. 122 (1985).

Clearly, the Attorney General thought the language of the county home rule constitutional provision gave legislative power to the electorate to amend or repeal ordinances or resolutions pursuant to Art. IX, Sec. II, Par. I(b)(2) that were local legislative acts not rising to the level of affecting state law. And clearly legal scholars think otherwise. See, R. Perry Sentell, Jr., *The Georgia Home Rule System*, 50 Mercer L. Rev. 99 (1998). “[B]lurring the distinction between the two delegations of legislating power set forth in subparagraphs (a) and (b). . . . [i]s easy to occur and has happened before.” Bd. of Comm'rs of Miller Cty. v. Callan, 290 Ga. 327, 329, 720 S.E.2d 608, 611 (2012), citing, Sentell, *supra*. Contributing to the blur in this case is the language of subparagraph (b)(2). “Amendments to or repeals of such local acts *or ordinances, resolutions, or regulations adopted pursuant to subparagraph (a)* hereof may be initiated by a petition filed with the judge of the probate court of the county. . . .” (Emphasis added). Ga. Const. Art. IX, § 2, ¶ I (b)(2).

As construction of this language has not been determined by this Court, the act of Judge Sweatt in applying this language in the county home rule constitutional provision to the petition and referendum process at issue was by its very essence

judicial in nature involving the character of judgment or discretion. “As the United States Supreme Court in Wilbur v. United States, 281 U.S. 206, 218–219, 50 S.Ct. 320, 74 L.Ed. 809 (1930), opined:

Where the duty in a particular situation is so plainly prescribed as to be free from doubt and equivalent to a positive command it is regarded as being so far ministerial that its performance may be compelled by mandamus, unless there be provision or implication to the contrary. But where the duty is not thus plainly prescribed but depends upon a statute or statutes the construction or application of which is not free from doubt, it is regarded as involving the character of judgment or discretion which cannot be controlled by mandamus.”

Smith & Wesson Corp. v. City of Atlanta, 273 Ga. 431, 433, 543 S.E.2d 16, 19–20 (2001). The extraordinary writs of prohibition and mandamus are not the proper remedies for review to require Judge Sweatt to perform his judicial functions in a manner differently than he performed it. Smith & Wesson Corp., supra.

B. Home Rule for Counties: Jurisdiction of Probate Judge.

The county home rule provision of the Georgia Constitution confers original and exclusive jurisdiction on the probate judge of the county in the petition and referendum process. “Amendments to or repeals of such local acts or ordinances, resolutions, or regulations adopted pursuant to subparagraph (a) hereof may be initiated by a petition filed with the judge of the probate court of the county. . . .” Ga. Const. Art. IX, § 2, ¶ I(b)(2). Probate courts have authority, unless otherwise

provided by law, to exercise original, exclusive, and general jurisdiction of all matters as may be conferred on them by the Constitution and laws. O.C.G.A. § 15-9-30(a)(12). Ga. Const. Art. VI, § 3, ¶ I. “Each judge of the probate court shall have authority to perform any judicial act which he or she is lawfully entitled to perform, regardless of where such judge is located when such judicial act is performed.” O.C.G.A. § 15-9-30(d).

The judge of the probate court of the county must carry out those duties imposed upon him by Art. IX, Sec. II, Par. I(b)(2) of the Constitution of the State of Georgia. “One of the fundamental tenets of our law is that the Constitution must be given supremacy over provisions of general or local law to the contrary. Since the judge of the probate court is the official vested with the duty under these home rule provisions of the Constitution, the judge of probate court must exercise these duties and may not delegate such duties nor may these duties be vested in [a county board of elections] by local Act.” 1988 Ga. Op. Atty. Gen. 116 (1988).

One of the duties the Constitution imposes on the judge of the probate court is to determine the validity of the petition. “The judge of the probate court shall determine the validity of such petition. . . .” Ga. Const. Art. IX, § 2, ¶ I(b)(2).

Determining the validity of the petition requires the exercise of decision or judgment.³

A probate judge completes a judicial act when he exercises judgment or discretion.

Henderson v. McVay, 269 Ga. 7, 8, 494 S.E.2d 653, 654 (1998).

C. Home Rule for Counties: Remedy of Judicial Review.

The county home rule provision of the Georgia Constitution affords a legal remedy to challenge the validity of the petition and gives the standard of judicial review. “[I]n any proceeding in which the validity of the petition is at issue, the tribunal considering such issue shall not be limited by the reasons assigned [by the probate judge].” Ga. Const. art. IX, § 2, ¶ I(b)(2).

In this case, the tribunal of review is the Superior Court of Camden County. The superior courts shall have such appellate jurisdiction, either alone or by circuit or district, as may be provided by law. Ga. Const. Art. VI, § 4, ¶ I. The superior courts have authority to exercise appellate jurisdiction from judgments of the probate court.⁴ O.C.G.A. § 15-6-8 (1). An appeal shall lie to the superior court from any

³Judge Sweatt considered pleadings and briefs filed by the electors and the county in determining the validity of the petition. (R-11-117).

⁴Superior Courts also have authority to review and correct, in the manner prescribed by law, the judgments of judges of the probate courts O.C.G.A. § 15-6-8(4)(E) when review is brought by writ of certiorari. "The writ of certiorari shall lie for the correction of errors committed by any inferior judicatory or any person exercising judicial powers, including the judge of the probate court, except in cases touching the probate of wills, granting letters testamentary, and of

decision made by the probate court, except an order appointing a temporary administrator. O.C.G.A. § 5-3-2. An appeal to the superior court in any case where not otherwise provided by law is a de novo investigation. O.C.G.A. § 5-3-29.

“Writs of mandamus and prohibition are extraordinary remedies available in limited circumstances to compel action or inaction on the part of a public officer when there is no other adequate legal remedy.” Ford Motor Co. v. Lawrence, 279 Ga. 284, 285, 612 S.E.2d 301, 303 (2005). The availability of judicial review is an adequate legal remedy. Id., at 285, 612 S.E.2d at 303. The extraordinary writs of prohibition and mandamus will not lie when there is an adequate legal remedy. O.C.G.A. § 9-6-40; O.C.G.A. § 9-6-20.⁵

administration." O.C.G.A. § 5-4-1(a).

⁵Nor will mandamus lie to undo a past act. "Mandamus is an extraordinary remedy to compel a public officer to perform a required duty when there is no other adequate legal remedy. ... In general, mandamus relief is not available to compel officials to follow a general course of conduct, perform a discretionary act, or undo a past act. Furthermore, once the public duty has occurred, the prayer that mandamus be issued compelling a public officer to perform that public duty is moot." GeorgiaCarry.Org, Inc. v. Bordeaux, 352 Ga. App. 399, 400, 834 S.E.2d 896, 899 (2019).

VI.

SUMMARY

Article IX, Section II, Paragraph I(b)(2) of the Georgia Constitution confers jurisdiction of the petition and referendum process on the probate judge. The process is initiated by a petition filed with the judge of the probate court of the county, who shall determine the validity of such petition. The determination of validity is subject to judicial review. Judge Sweatt had exclusive jurisdiction to determine the validity of the petition and that judicial determination was subject to judicial review by the Superior Court. Extraordinary writs are not the proper remedy to seek such review and the Superior Court did not err in denying Camden County's Petition against Judge Sweatt.

Respectfully submitted, this day, May 9, 2022.

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CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing Brief of Appellee on the below counsel/parties via email prior to filing.

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