IN THE SUPREME COURT
OF THE STATE OF GEORGIA

COLUMBUS, GEORGIA, et. al.	)	
	)	
Appellants,	)	Case Number:
	)	S15A1552
v.	)	
	)	
LINDA PIERCE, Clerk of Superior,	)	
State, and Juvenile Courts of	)	
Muscogee County, and the	)	
Columbus Board of Equalization,	)	
	)	
Appellee.	)	

BRIEF OF APPELLANTS

James C. Clark, Jr.
Ga. Bar No.: 127145
Alan G. Snipes
Ga. Bar No.: 665781
Thomas F. Gristina
Ga. Bar No.: 452454

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INTRODUCTION

Appellee Linda Pierce, Clerk of the Superior Court of Muscogee County (the "Clerk") filed the present action on November 13, 2014. The Clerk was dissatisfied with the funds appropriated to her office in the Fiscal Year 2015 budget ("FY 2015") by the duly elected Council (the "Council" or the "Council Members") of the consolidated government of Columbus, Georgia (the "CCG"). The Clerk's adopted FY 2015 budget (including the Superior Court Clerk budget, the Juvenile Court Clerk budget, and the Board of Equalization Budget) was $2,156,159, down only approximately 1.5% from her appropriated budget the previous year. She wanted a budget of $3,012,307 for FY 2015, almost 50% higher than had ever been previously appropriated for her or that she had ever spent in any preceding fiscal year. Having failed to convince the elected Council of her alleged need for such a massive funding increase, she turned to the courts.[1]

Appellants, who include the Mayor of the CCG, the entire Council, and various other governmental officers, were sued in their official and individual

[1]The fiscal year for the CCG runs from July 1 to June 30 of each successive year. The Clerk's claims at issue in this appeal concern the 2015 fiscal year, which has now already expired. All of the Clerk's claims at issue in this appeal are moot. After the notice of appeal was filed in this case, the Clerk filed an "amendment" to her complaint on July 1, 2015, to make essentially the same claims with respect to her adopted budget for the 2016 fiscal year. The Clerk's new filing, over which the trial court has no jurisdiction due to this appeal, demonstrates conclusively that the Clerk will continue to use litigation, year after year, as a heavy handed budget negotiating tool. That is not the way responsible government is supposed to work, and that is what this appeal is all about.

capacities. The Clerk even sought to impose *personal liability* on Appellants for her attorney's fees and expenses. Appellants moved to dismiss. That motion was granted on sovereign immunity grounds, but denied on all other grounds, including official and legislative immunity. The trial court further ordered the CCG to pay the Clerk's agreed upon attorney's fees under O.C.G.A. § 45-9-21(e) as a constitutional officer, but, then, ordered those attorney's fees to be allocated from the CCG's so-called "general fund," and not from the funds the governing authority budgeted to the Clerk.

This case is about the limits of jurisdiction of the courts in Georgia, and specifically whether courts can be called upon to legislate or arbitrate local budgetary matters. This Court has time and again held that Superior Courts in Georgia have no jurisdiction over such matters. *See, e.g., Bentley v. Chastain*, 242 Ga. 348, 351, 249 S.E.2d 38, 40 (1978) ("It is axiomatic that, under the separation of powers, non-judicial functions may not be imposed on a constitutional court."); *see also* O.C.G.A. § 36-5-22.1 (The "governing authority" [here the Council] of each county has "*original and exclusive jurisdiction*" over funds and property of county)(emphasis added).

Assuming the trial court even had jurisdiction to consider any part of the Clerk's case, there was no cognizable claim pled here. The Clerk pled her injunction case against defendants in their individual capacities, but the relief she

sought was for them to perform official duties. She pled a mandamus case, but pled no clear right to relief, as she was required to do. Her pleadings affirmatively show that the Council deliberated and exercised its discretion in appropriating funds for the Clerk. That is all the Council was required to do, and they are absolutely immune from suit for having done so. *Saleem v. Snow*, 217 Ga. App. 883, 886, 460 S.E.2d 104, 107 (1995) ("Individuals acting in a legislative capacity are absolutely immune from suit."); *see also Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998)(Mayors are likewise protected under legislative immunity for executive actions taken as part of a legislative budget process).

The trial court erroneously believes it has jurisdiction over this matter and has overruled the legislative and official immunity Appellants so clearly possess. The trial court's error could wreak chaos throughout Georgia if every unhappy elected official from the state's 159 counties runs to court for an extra $100,000 or $1,000,000, because they think they need more money to do their jobs better. The trial court assumed jurisdiction over matters over which it had none, then failed to apply the applicable immunities, and, then, applied the wrong standard to consider any remaining claims. The trial court's orders adverse to Appellants are due to be **REVERSED.**[2]

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[2]The trial court's confusion may well be based upon the unorthodox allegations the Clerk has made in this case. The Clerk urges that she is her own "local unit of government" and her own "budget officer." (R2-687, ¶ 52). She alleges that

STATEMENT OF JURISDICTION

Appellants appeal from the trial court's order denying, in part, their motions to dismiss entered on April 29, 2015 (the "Motion to Dismiss Order") (R2-908-12), and the trial court's order and injunction entered on April 29, 2015 on Appellee's Motion for Authority to Retain Independent Counsel and for Payment of Attorney's Fees and Litigation Expenses (the "Attorney's Fee Order") (R2-913-17). Pursuant to Art. VI, § 6, ¶ III of the Constitution of the State of Georgia, this Court, rather than the Court of Appeals, has original jurisdiction over this matter because the Attorney's Fee Order granted an equitable and/or extraordinary mandamus remedy to Appellee. This Court has jurisdiction over all remaining issues related to the Motion to Dismiss Order pursuant to O.C.G.A. § 5-6-34(d),

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because she is her own "unit of local government" (R2-687, ¶ 51), the CCG can take *no action* affecting the Clerk's office budget. She seeks to imbue her office with the powers of a governing authority so that she may be the final word on the funding level of her office budget. *Contrast* O.C.G.A.§ 36-81-2(12) and (16)(defining "governing authority" and "local unit of government"). A "[l]ocal unit of government" is strictly defined by Georgia law to be "a municipality, county, consolidated city-county government or other political subdivision of the state." *See* O.C.G.A. § 36-81-2(16)(specifically providing that constitutional officers are part of the county governing authority). The Clerk is also not her own "budget officer." O.C.G.A. § 36-81-4(b) (The county "governing authority" is the "budget officer."). There is no question that the CCG has the authority to set the Clerk's budget. *Griffies v. Coweta County*, 272 Ga. 506, 507-08, 530 S.E.2d 718, 720 (2000) ("Griffies, as clerk of superior court, is an elected constitutional officer, and is not an employee of the county commission. Although Griffies is an independent constitutional officer, the county commission nevertheless has the authority to review and approve the proposed budget for the clerk's office that Griffies submits to them.")

and under the collateral order doctrine due to the trial court's rejection of defenses of official and/or legislative immunity asserted by Appellants. *Liberty County School Distr. v. Halliburton*, 328 Ga. App. 422, 425, 762 S.E.2d 138, 142 (2014) ("[T]he trial court's rejection of the defenses of sovereign and qualified immunity was 'conclusive' such that defendants were entitled to a direct appeal under the collateral order doctrine.").

STATEMENT OF FACTS

1. The Parties

The CCG is a consolidated city/county government, a public corporation and body politic, and a political subdivision of the State of Georgia. (R2-679). Defendant Teresa P. Tomlinson is the duly elected, qualified, and serving Mayor of Columbus. (*Id.*). Defendants Jerry "Pops" Barnes, Glenn Davis, Bruce Huff, Evelyn Pugh, Mike Baker, Gary Allen, Evelyn "Mimi" Woodson, Judy Thomas, and Berry "Skip" Henderson are the Council Members of the CCG. (R2-679-681). Mayor Tomlinson and all Council Members are named in both their individual and official capacities. (*Id.*)[3]

[3]In deciding a Motion to Dismiss, "[a]ll well-pleaded material allegations by the nonmovant are taken as true, and all denials by the movant are taken as false..." *Hewell v. Walton County*, 292 Ga. App. 510, 511, 664 S.E.2d 875, 876 (2008) (internal citations omitted). Due to the applicable standard, Appellants focus on the allegations in the Clerk's Complaint, although nearly all of the substantive characterizations contained in the allegations are disputed.

At the time the Complaint was filed, Defendants Isaiah Hugley, Pamela Hodge, and Clifton C. Fay, respectively, were the City Manager, Finance Director, and the City Attorney for the CCG. (R2-681-82). Defendant Reather Hollowell is the Human Resources Director for the CCG. (R2-682). Defendants Hugley, Hodge, and Fay are all sued in their individual and official capacities while Defendant Hollowell is only sued in her official capacity. (*Id.*).[4]

2. <u>The Clerk's Claims</u>

Through a variety of conflicting claims, the Clerk has brought her Complaint in the present case complaining about her FY 2015 budget. Albeit with an incorrect date, she admits that the Mayor timely submitted a proposed budget to the Council as required by law on April 8, 2014, prior to the due date of May 2, 2014. (R2-688, 701). The Clerk claims that she submitted a budget request to the Council on May 20, 2014, and not to the City Manager as required by CCG Charter, Sec. 8-105. (*Id.*). The Clerk admits both the Mayor's proposed budget and the Clerk's budget request were presented to the Council prior to its deliberation on the FY 2015 budget. (R2-702).[5]

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[4]The Mayor, Council Members, and other county officials and employees are referred to collectively as the "Individual Defendants."

[5]In paragraph 126 of her Amended Complaint, the Clerk contends that "[i]n violation of § 8-105 of the Charter, the Mayor did not present the Clerk's budget request into the proposed FY 2015 budget to be presented to the Council." (R2-795). In paragraph 124 of her Complaint, the Clerk admits the Mayor submitted

On June 17, 2014, the Council passed Ordinance 14-25 adopting the annual budget for the CCG, which included a budget for the Clerk that was approximately 1.5% less than the amount appropriated for her for the previous fiscal year. (R2-701, ¶ 130). The Clerk now complains that the adopted budget "failed to give any consideration to its effect on the Clerk in comparison to other budget considerations, or consider whether it would be reasonably adequate to enable the Clerk to perform her official duties as required by law." (*Id.*, ¶ 129).

The Clerk has requested a litany of relief primarily set forth in paragraphs 148 and 160 of her Complaint. (R2-704, 708). In short, she wants more money. She seeks a judgment of mandamus absolute and/or injunction setting aside the FY 2015 approved budget and compelling Appellants to adopt a new FY 2015 budget for the Clerk. (R2-704-05). In the meantime, she seeks a judgment of mandamus absolute and/or a temporary and permanent injunction compelling Appellants to "pay the Clerks expenses according to the amount appropriated in the City's FY

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her FY 2015 budget to the Council on April 8, 2014 (the proposed budget was actually submitted before that date but the Clerk's allegations are taken as true in the present procedural posture). (R2-794). In paragraph 121 of her Complaint, the Clerk admits that she presented her budget request to the Council on May 20, 2014 (weeks after it was requested). (*Id.*). The Clerk repeatedly complains that the Mayor did not "incorporate" her budget request into the proposed budget the Mayor submitted to Council. Yet, the Clerk simultaneously *admits* that her budget request was not even prepared until after the Mayor's proposed budget was already submitted to the Council.

2014 budget on a monthly pro rata basis until a new FY 2015 is adopted for the Clerk's office." (R2-705, 709).

The Clerk further requests money damages of "not less than $750,000" for breach of contract against the CCG. (R2-712). Finally, she seeks attorney's fees and expenses, to be entered as a judgment against "Defendants the Mayor, City Manager, City Attorney, Finance Director, and Councilors individually, jointly and severally, compelling them personally, to reimburse the City all expenses of litigation, including attorney's fees, paid by the City for representation of the Clerk and the Defendants in this action." (R2-713-714).[6]

3. The Trial Court's Orders

On April 29, 2015, the trial court (Hon. Hilton M. Fuller, Senior Superior Court Judge, sitting by designation due to the recusal of all local judges) formally

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[6]The Clerk's Complaint further repeatedly requests the Court to enter mandamus and/or injunctive orders requiring Appellants to comply with the law. *See, e.g.*, R2-704, ¶ 148(a)(where the Clerk seeks an order compelling "Defendants the City, Mayor, City Manager, City Attorney, Finance Director and Councilors to follow the budgetary process required by State Law and the Charter in setting the Clerk's FY 2015 budget"); R2-708, ¶ 160(n)(where the Clerk seeks a temporary and permanent injunction prohibiting Defendants from taking any action against the Clerk "affecting the Clerk, her office, her employees and their salaries in violation of Ga. Const. Art. IX, ¶ 1(c)(1) and (7)"). The Clerk's request for mandamus and/or injunctive relief ordering Appellants to comply with the law is a legal nullity. *Wiggins v. Bd. of Comm'rs of Tift County*, 258 Ga. App. 666, 668, 574 S.E.2d 874, 876 (2002)("We conclude, however that the Superior Court erred in granting Wiggins injunctive relief against the Board from future violations of the Act, in effect requiring the Board to obey the law, a duty which it already had and as to which relief in equity is generally unavailable.").

filed its order granting in part and denying in part Appellants' Motions to Dismiss. (R2-908-12). Relying on this Court's opinion in *Georgia Dep't. of Natural Res. v. Ctr. for a Sustainable Coast, Inc.*, 294 Ga. 593, 593, 755 S.E.2d 184, 186 (2014), the trial court properly granted Appellants' Motions to Dismiss as to injunctive claims against the CCG and the Individual Defendants in their official capacities. (R2-911). The trial court, however, denied Appellants' Motions to Dismiss as to "other claims against CCG and the individual defendants in individual capacities" and as to "declaratory judgments and mandamus claims." (R2-911-12).[7]

That same day, the trial court also filed an Order on the Clerk's Attorney's Fee Motion filed pursuant to O.C.G.A. § 45-9-21(e). (R2-913). Appellants had not opposed the Clerk's retention of counsel or that her counsel would be paid at the same rate as counsel for Appellants, as required by O.C.G.A. § 45-9-21(e). (R2-915). The Clerk, however, had moved the Court to order that any attorney's fees paid by the CCG for the Clerk's counsel be charged against "general funds" of

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[7]The trial court apparently believes the Clerk has asserted declaratory judgment claims. Her complaint is unclear on that point, although she does vaguely ask for judgments declaring the budget ordinance "void." (R2-704, ¶ 148(c)). Recently, in *SJN Properties, LLC v. Fulton County Bd. of Assessors*, 296 Ga. 793, 770 S.E.2d 832 (2015), this Court cited *DeKalb County Sch. Dist. v. Gold*, 318 Ga. App. 633, 637, 734 S.E.2d 466 (2012), for the proposition that "[o]ur Constitution and statutes do not provide a blanket waiver of sovereign immunity in declaratory-judgment actions." *SJN Properties*, 296 Ga. at 800, 770 S.E.2d at 838. Appellants submit that to the extent the Clerk has asserted declaratory judgment claims, those claims are also barred by sovereign immunity.

the CCG, and not against the Clerk's budget, as are all other expenditures of the Clerk. (R2-915). The trial court ordered the following:

> 16. CCG is not authorized to charge the amount of the Clerk's attorney's fees and litigation expenses for representation in this case against the Clerk's FY15 budget; instead it shall pay such fees and expenses as approved by the Court from CCG's general funds as a cost of governmental operations.
>
> . . .
>
> 18. Within 10 days of entry of this order the Defendants and their counsel shall submit to the Court proof of rates for attorney's fee charged by the Defendants' attorneys to represent them in this matter, and serve such proof on the Clerk's counsel. Along with that submission, the Defendants shall submit to the Court for in camera inspection all bills previously sent to the City for the Defendant's attorney's services in this case along with evidence of payment of such bills by the City...

(R2-917).[8]

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[8]The trial court's Attorney Fee Order could only be construed as an injunction and/or mandamus order. It ordered the CCG and its counsel to perform specific tasks and it instructed the manner in which they must be performed. *See, e.g., Nashville Restaurant Management, LLC v. Gwinnett County*, 288 Ga. 664, 706 S.E.2d 451 (2011)(Trial court's emergency order directing county to take certain remedial actions to repair sinkhole constituted an injunction); *Darden v. Ravan*, 232 Ga. 756, 208 S.E.2d 846 (1974)("A judgment rendered sua sponte by the superior court which mandates actions and which, if valid, would authorize the court to hold the persons named in such judgment in contempt of court is an appealable judgment."). Appellants filed a Motion to Stay the Attorney's Fee Order in the trial court that has not been ruled on as of this date. Appellants and their counsel have not submitted the bills of their counsel (which will contain information subject to the attorney client and work product privileges) to the trial judge, who would be the trier of fact in this non-jury proceeding.

Appellants timely filed a Notice of Appeal from the Motion to Dismiss Order and the Attorney's Fee Order. (R1-1).

ENUMERATION OF ERRORS

I. The trial court erred in denying in part Appellants' Motions to Dismiss (R2-908-12) because the trial court lacked jurisdiction to consider Appellee's claims, the trial court failed to recognize the legislative and/or official immunity bar to suit, and Appellee otherwise failed to plead a cognizable claim.

II. The trial court erred in granting Appellee's Attorney's Fee Motion (R2-913-17) and granting injunctive and/or extraordinary mandamus remedies because the trial court lacked jurisdiction to provide any such relief, and the granting of such relief was otherwise contrary to Georgia statutory and case law.

STANDARD OF REVIEW

A *de novo* standard of review applies to the trial court's grant or denial of a motion to dismiss. *Alcatraz Media, LLC v. YahooA Inc.*, 290 Ga. App. 882, 882, 660 S.E.2d 797, 798 (2008). This Court must accept all well-pleaded facts in the Clerk's Complaint as true, but is not required to adopt her legal conclusions. *Novare Grp., Inc. v. Sarif*, 290 Ga. 186, 191, 718 S.E.2d 304, 309 (2011).

This Court reviews a grant of injunctive and/or mandamus relief under an abuse of discretion standard. *Burke Cnty. v. Askin*, 294 Ga. 634, 637, 755 S.E.2d 747, 750 (2014). It is error for a trial court not to dismiss a mandamus petition

where there is no basis in law or fact for the mandamus relief sought. *Halliburton*, *supra*, 328 Ga. App. at 422, 762 S.E.2d at 140.

ARGUMENT AND CITATION OF AUTHORITY

I. The Trial Court Erred In Denying Appellants' Motions to Dismiss.

A. The Trial Court Lacked Subject Matter Jurisdiction.

The trial court's Motion to Dismiss Order and its Attorney's Fee Order are both premised on the proposition that a Superior Court has jurisdiction to order Appellants to allocate certain sums of money to the Clerk and to order the CCG how those sums will be allocated. While the Superior Courts of the State of Georgia are so-called courts of general jurisdiction, "their jurisdiction is limited by the Constitution." *Tucker v. Harris*, 13 Ga. 1, 7-8 (1853). The Georgia Constitution provides that "[t]he legislative, judicial, and executive powers shall forever remain separate and distinct; and no person discharging the duties of one shall at the same time exercise the functions of either of the others except as herein provided." Ga. Const. of 1983, Art. I, § 2, ¶ III; *see also Dion v. Y.S.G. Enterprises, Inc.*, 296 Ga. 185, 188, 766 S.E.2d 48, 51 (2014).

By statute, Georgia law provides that the "governing authority" [here the Council] of each county has "*original and exclusive jurisdiction*" over, among other things, "(1) The directing and controlling of all the property of the county, according to law, as the governing authority deems expedient" and "(7) The

examining and auditing of the accounts of all officers having the care, management, keeping, collection, or disbursement of money belonging to the county or appropriated for its use and benefit and the settling of the same." O.C.G.A. § 36-5-22.1; *see also Turner County v. City of Asburn*, 293 Ga. 739, 744, 749 S.E.2d 649, 690 (2013) (The power to tax and a county's allocation of tax revenues are subjects of exclusive legislative jurisdiction). Georgia law therefore dictates that the CCG, and the CCG alone, controls all the monies in its coffers and how those monies are appropriated.

The Clerk requests a mandamus absolute and/or injunction setting aside the Clerk's FY 2015 budget, compelling Appellants to adopt a new FY 2015 budget for the Clerk, and a whole host of other similar relief. (R2-704, ¶ 148; R2-708, ¶ 160). The Clerk is asking the Superior Court to direct *the manner* in which the Council appropriates funds. A Superior Court has no jurisdiction to entertain any such relief:

> The courts have no authority to interfere with the duties of a public official which are discretionary in nature....[T]he courts can only decide the legal issues involved, and can not direct the specific manner in which the Commissioner of Banking and Finance shall perform his duties, except that it must be in accordance with the interpretation of the law given by the court. Compare Persons v. Mashburn, 211 Ga. 477(1) 86 S.E.2d 319.

Citizens & Southern Nat. Bank v. Independent Bankers Assoc. of Georgia, Inc., 231 Ga. 421, 425, 202 S.E.2d 78, 81 (1973).[9]

The crux of the Clerk's claim in this case is that the Council appropriated less than she wanted, not that it failed to consider her budget request, and not that it failed to act within its discretion. She asks the Superior Court to substitute its discretion for that of the Council. *Turner Cnty.*, 293 Ga. 739 at 745, 749 S.E.2d at 690 (2013)("Judicial review may not be expanded to substitute the court's decision for that of the parties."). The relief sought by the Clerk is beyond the jurisdiction of Superior Courts in Georgia and her Complaint should have been dismissed.[10]

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[9]For the same reason, the trial court's Attorney's Fee Order was erroneous as the trial court had no jurisdiction to order the CCG how to allocate funds to pay the Clerk's attorney's fees. *See infra* at pp. 26-30.

[10]In the event this Court determines that the trial court has some limited jurisdiction over the Clerk's claims, Appellants submit that the trial court should be provided direction as to the limits of its jurisdiction. For example, the trial court may be laboring under the misimpression that it could set a budget for the Clerk and order the CCG to provide those funds. Any order directing *the manner* in which the Council appropriates funds for the Clerk would plainly be in error. *See, e.g., Citizens & Southern Nat. Bank, supra*, 231 Ga. at 425, 202 S.E.2d at 81; *Bibb Cnty. v. Monroe Cnty.*, 294 Ga. 730, 736, 755 S.E.2d 760, 767 (2014)("Even where official action of some sort is required, however, where the action involves the exercise of discretion, mandamus will not lie to dictate the manner in which the action is taken or the outcome of such action.").

B. *Saba* Does Not Rescue The Clerk's Case.

In the trial court, the Clerk relied heavily on *Bd. of Comm'rs of Dougherty County v. Saba*, 278 Ga. 176, 598 S.E.2d 437 (2004), arguing that the question of reasonableness of an appropriated budget for a constitutional officer is always a proper issue for mandamus. In *Saba*, this Court recognized that the budgets and accounts of constitutional officers such as the Clerk "are subject to the authority of the county commission, which can amend or change estimates of required expenditures presented by the county officer." *Id.* at 177, 598 S.E.2d at 439. This Court further held:

> The county commission has the power to cut the budget of an elected constitutional county officer (*Chaffin v. Calhoun,* 262 Ga. 202, 415 S.E.2d 906 (1992); *Bd. of Commrs. of Randolph County v. Wilson,* supra), but the county commission's changes to the budget submitted by the elected constitutional county officer may be judicially reviewed for abuse of discretion. *Griffies v. Coweta County,* 272 Ga. 506(1), 530 S.E.2d 718 (2000). The focus of that judicial review is whether the county commission fulfilled its duty "to adopt a budget making reasonable and adequate provision for the personnel and equipment necessary to enable the sheriff to perform his duties of enforcing the law and preserving the peace." *Chaffin v. Calhoun,* supra, 262 Ga. at 203, 415 S.E.2d 906. A county commission which adopts a budget that does not provide *any* funds to the sheriff for law enforcement purposes has abused its discretion. *Wolfe v. Huff,* 233 Ga. 162, 164, 210 S.E.2d 699 (1974).

Id.

Given that the power to allocate funds is a matter of exclusive legislative jurisdiction, *Turner County, supra*, 293 Ga. at 744, 749 S.E.2d at 690, *Saba* can

only mean that county governments are free to set budgets for constitutional officers however they deem appropriate so long as they do not manifestly abuse their discretion. In the context of constitutional officers, that can only mean that the budget set by the county for a constitutional officer must meet a constitutional minimum for the officer to perform their duties. *Compare, e.g., Wolfe v. Huff,* 233 Ga. 162, 164, 210 S.E.2d 699, 701 (1974) (County manifestly abused its discretion where it appropriated no money for the operation of a sheriff's office); C*haffin v. Calhoun*, 262 Ga. 202, 203, 415 S.E.2d 906, 907 (1992) (county commission did not manifestly abuse its discretion in cutting a Sheriff's budget by some 47%).

This is a critical point, and one this Court has not definitively answered in any of the constitutional officer budget cases. The issue cannot be how much money the Clerk wants or even thinks she needs to perform her job. The issue must be the minimum amount of money necessary for the Clerk to perform her constitutional duties. This is the central problem with the Clerk's Complaint. The Clerk's Complaint identifies no statutory duties she is unable to perform as a result of the funds appropriated for her office. *See* O.C.G.A. § 15-6-61 (delineating statutory duties required of Superior Court clerks). She does not plead what amount she needs to enable her to perform her constitutional duties, and why the amounts appropriated to her are insufficient to allow her to perform her constitutional duties.

In order to state a claim, a constitutional officer must at a minimum meet these pleading requirements. Otherwise, the result is a case like this one where a constitutional officer claims to receive a mere 1.5% budget cut, runs to court, forces a local government to litigate, and then uses litigation costs as an attempted negotiating tool for further budget appropriations. The Clerk's Complaint fails to state a claim, and it should have been dismissed by the trial court.[11]

C. Legislative Immunity Bars The Clerk's Claims Against the Individual Defendants.

Assuming the trial court had any jurisdiction over the claims made by the Clerk, those claims against the Individual Defendants would be wholly barred by legislative immunity. Legislative immunity extends to both official capacity and individual capacity claims, which means all claims against the Individual Defendants are barred. *Scott v. Taylor*, 405 F.3d 1251, 1257 (11th Cir. 2005)("Because Appellants are state legislators who acted in their legislative capacities, they are entitled to absolute legislative immunity. This is true regardless

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[11]The present case proves this point conclusively. The Clerk failed to plead any amount she needs to perform her constitutional duties, and failed to plead any constitutional duties she is unable to perform. The budget about which she complains was approximately 1.5% less than the budget appropriated for her in the previous year. As a matter of sound public policy, county governments should not be required to litigate and expend significant attorney's fees over 1.5% budget cuts, when there is not even an allegation of the constitutional minimum the Clerk needs to perform her job. *Chaffin*, 262 Ga. at 203, 415 S.E.2d at 907 (no abuse of discretion in cutting a Sheriff's budget by some 47%).

of whether a suit seeks damages or prospective relief and regardless of whether the state legislators are named in their individual or official capacity.").[12]

Budgeting is inherently a legislative function. Actions taken and decisions made with regard to budget matters accordingly give rise to legislative immunity, no matter who takes the action or makes the decisions. *Woods v. Gamel*, 132 F.3d 1417, 1419-20 (11th Cir. 1998)("In this case, the commissioners' act of passing the budget was legislative: policymaking of general application."); *see also Bogan*, 523 U.S. at 55("Petitioner Bogan's [a city mayor] introduction of a budget and signing into law an ordinance also were formally legislative, even though he was an executive official."); *Bryant v. CEO Dekalb County Jones*, 575 F.3d 1281 (11th Cir. 2009)(Executive assistant was entitled to "absolute legislative immunity against any claims, including Lowe's retaliation claim, arising from actions directly related to his preparing and drafting the 2004 budget proposal.").[13]

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[12]It should be noted that legislative and official immunity were apparently not at issue in *Saba*. Those defenses have been pled in this case and are squarely before the Court.

[13]The Charter expressly requires the Mayor to submit a proposed budget "for the ensuring fiscal year...on or before a date fixed by ordinance, but not less than sixty (60) days prior to the beginning of the fiscal year." Charter § 7-401(2). The Mayor's proposal is just that – a proposal. The Mayor did not vote on the final FY 2015 budget. Neither did the City Manager, the Finance Director, the Human Resources Director, or the City Attorney. Even if these individuals had some marginal involvement with preparation of a proposed budget, they were acting in a legislative capacity and are cloaked with legislative immunity. *Bogan*, 523 U.S. at 55.

Georgia state law expressly recognizes that "[i]ndividuals acting in a legislative capacity are absolutely immune from suit." *Saleem*, *supra*, 217 Ga. App. at 886, 460 S.E.2d at 108. This blanket of immunity applies regardless of the action or inaction of the parties exercising legislative discretion, even if bad motives are shown. *Whipple v. City of Cordele*, 231 Ga. App. 274, 276, 499 S.E.2d 113, 115 (1988) ("[E]ven if the record were to include evidence showing that the motives of the county commission were suspect when they enacted this ordinance, the U.S. Supreme Court has recently held that local legislators are entitled to absolute immunity in performing their legislative functions, regardless of their motives.").

This case is about a budget that the Clerk admits was adopted by the Council Members who are a duly elected legislative body. The Clerk fails to identify any acts on the part of any of the Appellants that were not performed as part of the legislative process. The Clerk admits that the Mayor submitted a proposed budget to Council. (R2-700, ¶ 122). She admits that she forwarded her budget requests to the Council prior to the start of the fiscal year, though the Clerk failed to participate in the required executive initial budgetary policy-making process. (R2-700, ¶ 123); *see also* O.C.G.A §36-81-4(c); Charter Sec. 7-401. And, she admits that the Council had all of these materials prior to adoption of Ordinance 14-25, which adopted the FY 2015 budget. (R2-701, ¶ 129). There is no allegation that

Appellants did anything other than deliberate over a budget that the Clerk now dislikes. All of the Individual Defendants' actions are blanketed by legislative immunity and the Clerk's claims should have been dismissed.

D. Official Immunity Bars the Clerk's Individual Capacity Claims.

To the extent any allegations of the Clerk against any of the Appellants go beyond their legislative function (which, as set forth above, they do not), Appellants are all also protected from liability in their individual capacities by the doctrine of official immunity. A suit against a public official in his or her individual capacity is barred by official immunity where the public official has engaged in discretionary acts that are within the scope of his or her authority, and the official has not acted with actual malice. *Butler v. Carlisle*, 299 Ga. App. 815, 683 S.E.2d 882 (2009); *see also Common Cause/Georgia v. City of Atlanta*, 279 Ga. 480, 482, 614 S.E.2d 761, 763 (2005).

In this case, the Clerk specifically pled in her original complaint that "Defendants Mayor, City Manager, City Attorney, Finance Director, and Councilors have acted knowingly, intentionally, wantonly, recklessly, arbitrarily, and capriciously, *have abused their discretion and have entirely failed to exercise their discretion* by failing to consider the Clerk's requested FY 2015 budget...." (R1-60, ¶ 139) (emphasis added). The Clerk's admission is a correct statement of the law as the consideration and adoption of a budget is unquestionably a

discretionary act. *See, e.g., Chaffin, supra*, 262 Ga. at 203, 415 S.E.2d at 907 (1992); O.C.G.A. § 36-81-4(c) (recognizing the discretionary "initial budget policy-making function" of executive officers in the local government process). As such, the conduct of Appellants is protected by official immunity.

After Appellants moved to dismiss, the Clerk amended her complaint in an attempt to withdraw her admission and allege that Appellants acted with "actual malice." (R2-703, ¶ 139). The Clerk's admission that Appellants' actions were discretionary is conclusive. *Aycock v. Calk*, 228 Ga. App. 172, 173, 491 S.E.2d 383, 385 (1997)("What a party admits to be true in his pleadings, he is not permitted subsequently to deny."). And merely alleging "actual malice" with no supporting facts is not enough to strip Appellants of their official immunity. *See, e.g., Murphy v. Bajjani*, 282 Ga. 197, 203-04 647 S.E.2d 54, 57 (2007)(reinstating the grant of a motion for judgment on the pleadings where plaintiffs' "allegations of malice are of deliberate acts of wrongdoing done with reckless disregard for the safety of others. As such, they do not allege the actual malice necessary to overcome official immunity for discretionary acts.").

The present case is not some sort of personal injury case where a government employee injured a citizen while impaired. This is a case about a county budget. The Clerk's only allegation of actual malice (in an amended complaint contradicted by her original complaint) is a specious one not rising to

the level of actual malice necessary to state a claim under Georgia law. *Murphy*, 282 Ga. at 203-04, 647 S.E.2d at 57. The Clerk's claims against the Individual Defendants in their individual capacities should have been dismissed.

E. The Clerk Failed To Plead a Cognizable Case.

On the merits, the Clerk likewise failed to plead a proper case and her Complaint should have been dismissed. The entire premise of the Clerk's Complaint is wrong. The Clerk cannot insist that the Council give her everything she wants. *See Saba*, *supra*, 278 Ga. at 178, 598 S.E.2d at 440. The Council must exercise its discretion to appropriate limited funds in such a way as to satisfy its obligations. There is simply no cause of action based on the allegations pled by the Clerk.[14]

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[14]In addition to the Clerk not pleading a cognizable claim, she has also failed to plead a claim against the Appellants in their proper capacities. The trial court is apparently confused on this issue. The relief the Clerk seeks, *i.e.*, that her FY 2015 budget be declared void and that the Council adopt a new FY 2015 budget for her, could only be an official capacity claim. The Council Members in their individual capacities have no authority to adopt a budget. None of the Individual Defendants have any authority in their individual capacities to perform *any* of the official acts requested as relief by the Clerk. The Charter only applies to the Individual Defendants in their official capacities. The Individual Defendants cannot be enjoined in their individual capacities to perform official acts, nor can mandamus issue to anyone in their individual capacity. *Bland Farms, LLC v. Georgia Dep't of Agr.*, 281 Ga. 192, 193, 637 S.E.2d 37, 39 (2006) ("Mandamus is an extraordinary remedy to compel a public officer to perform a required duty when there is no other adequate legal remedy."). For this practical reason alone, the trial court erred in not dismissing the individual capacity claims.

First, the Clerk pled no clear right to mandamus relief, as she was required to do. *Schrenko v. DeKalb County School Dist.,* 276 Ga. 786, 794, 582 S.E.2d 109 (2003). "[W]here the applicable law vests the official or agency with discretion with regard to whether action is required in a particular circumstance, mandamus will not lie, because there is no clear legal right to the performance of such an act." *Bibb County v. Monroe County*, 294 Ga. 730, 735, 755 S.E.2d 760, 767 (2014). The Clerk admits that the Council adopted a budget for her office. (R2-701, ¶ 130). Her complaint is not that the Council failed to adopt a budget as required by the Charter. Her complaint is that the Council did not provide her with the result she wanted in the budgeting process. The Clerk has no clear legal right to such relief. *Georgia Dep't. of Transp. v. Peach Hill Properties, Inc.*, 278 Ga. 198, 201, 599 S.E.2d 167, 169-70 (2004) ("Mandamus can compel an official clothed with discretion to act, but it cannot mandate the outcome."). [15]

Second, mandamus is unavailable to compel the undoing of acts already done, even if that act was illegal. *Ianicelli v. McNeely*, 272 Ga. 234, 235-36, 527 S.E.2d 189, 191 (2000). Similarly, equity will not intervene to enjoin an

[15]This also speaks to the lack of jurisdiction of the trial court. The Clerk seeks to compel how an official act is to be performed, and that is beyond the jurisdiction of the trial court. *Bibb Cnty.*, 294 Ga. at 738-39, 755 S.E.2d at 768-69("[W]hile mandamus could properly issue to compel the Secretary to determine the boundary line and record the survey and plat reflecting such line, the trial court erred in dictating the result of the review process by directing the Secretary to record the Scarborough survey.").

accomplished or completed act. *See e.g.*, *Shurley v. Black*, 156 Ga. 683, 119 S.E. 618 (1923) (injunction will not issue to undo a completed judicial sale of property). All of the Clerk's complaints regarding the FY 2015 budget process, whether phrased as mandamus claims or claims for injunctive relief, seek to undo a budget that has already been enacted. And, at this point, that enacted budget expired on June 30 at the end of the last fiscal year.

Third, and finally, the Clerk had, and has, an adequate remedy at law. "As a general rule, a writ of mandamus is not available when there is an adequate remedy at law available to the petitioner seeking mandamus (*Speedway Grading Corp. v. Barrow County Bd. of Commrs.*, 258 Ga. 693, 695, 373 S.E.2d 205 (1988)), and the appropriate inquiry is whether this legal remedy existed at the time mandamus relief was sought." *DeKalb County v. Cooper Homes*, 283 Ga. 111, 113, 657 S.E.2d 206, 208 (2008) (internal quotations omitted). In like manner, injunctive relief is inappropriate unless there are allegations and proof of the lack of an adequate remedy at law. *Allen v. Hub Cap Heaven, Inc.*, 225 Ga. App. 533, 540, 484 S.E.2d 259, 266 (1997).

It is undisputed that the CCG Charter expressly provides a legislative avenue for the Clerk to seek additional appropriations should the same become necessary. Charter § 7-404 ("Additional appropriations: The Council may make appropriations in addition to those contained in the current operating budget or

capital budget, at any regular or special meeting called for such purpose."); *see also* O.C.G.A. § 36-81-3(d) ("Nothing contained in this Code section shall preclude a local government from amending its budget so as to adapt to changing governmental needs during the budget period.").

If the Clerk was, or is, truly in need of additional funding, she does not have to seek a writ of mandamus or an injunction. She simply must appear before Council, request more funds, and explain the basis for her need for additional funds. The availability of an adequate remedy at law mandates dismissal of the Clerk's claims. *Carnes v. Crawford*, 246 Ga. 677, 679, 272 S.E.2d 690, 692 (1980) ("We find that the administrative remedies in the Administrative Procedure Act provide an adequate remedy and that failure to exhaust those remedies precludes issuance of the extraordinary writ of mandamus.").

F. The Clerk's Breach of Contract Claim Should Have Been Dismissed.

The trial court also erred in not dismissing the Clerk's claim for breach of contract. O.C.G.A. § 36-11-1 expressly requires that "[a]ll claims against counties must be presented within 12 months after they accrue or become payable or the same are barred...." "[A] cause of action against a county does not exist unless the claim has been presented within 12 months of its accrual." *Warnell v. Unified Govt. of Athens-Clarke County*, 328 Ga. App. 903, 905, 763 S.E.2d 284, 286 (2014). The Clerk has not alleged that she provided statutory notice of her claim

within twelve months after the claim accrued which, according to the Clerk's own allegations, could be no later than March, 2013. (R2-695, ¶ 93). The Clerk's claim for breach of contract is time barred as a matter of law. *Warnell*, 328 Ga. App. at 905, 763 S.E.2d at 286. The trial court should have dismissed the claim.[16]

II. The Trial Court's Grant of the Attorney's Fee Motion Was Erroneous.

The trial court likewise erred in entering the Attorney's Fee Order. The CCG never objected to the Clerk employing counsel of her choosing or to the Clerk's counsel being compensated at the same rate as counsel for the CCG pursuant to O.C.G.A. § 45-9-21(e). (R2-915, ¶ 8). The CCG's objection was to the Clerk's position that any money appropriated for her attorney's fees had to be allocated to the CCG's so-called "general fund." (*Id.*, ¶ 9).

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[16]It is likewise clear that the Clerk's contract claim is hopelessly confused. The Clerk acknowledges that the Tyler Contract is between the CCG and the Clerk as the "Client" and Tyler Technologies ("Tyler") as the "Company." (R1-193). The Clerk contends that, even though she is a party to the contract, she is also a third party beneficiary of the same contract. That cannot possibly be true. *See, e.g.*, *Donalson v. Coca-Cola Co.*, 164 Ga. App. 712, 713, 298 S.E.2d 25, 27 (1982) (In order to obtain status as a third party beneficiary of a contract, "[i]t must appear that both parties to the contract intended that the third person should be the beneficiary."). The Tyler Contract plainly states that it is "entered into solely for the benefit of COMPANY and CLIENT. No third party shall be deemed a beneficiary of this Agreement, and no third party shall have the right to make any claim or assert any right under this Agreement." (R1-193, Ex. "1", ¶ 1.4). The Clerk is not a third party beneficiary. Tyler, not the Clerk, had the right to expect the CCG's performance under the contract. No promises of any kind were made by the CCG to the Clerk. The CCG as a co-contracting party with the Clerk cannot be liable to the Clerk on the contract. If the CCG breached the contract with Tyler, which it did not, that was Tyler's claim to make, not the Clerk's.

The trial court did not conduct an evidentiary hearing on the Clerk's motion, but ordered the CCG to pay the Clerk's attorney's fees and expenses out of the CCG's "general funds." (R2-916, ¶ 16). The trial court's award of injunctive and/or mandamus relief to the Clerk without conducting an evidentiary hearing constitutes reversible error in and of itself. *Bernocchi v. Forcucci*, 279 Ga. 460, 461, 614 S.E.2d 775, 777 (2005)("Since the grant of injunctive relief occurred without a balancing of the equities and without evidentiary support, the entry of injunctive relief must be reversed for lack of evidentiary support."); *see also Kennedy v. W.M. Sheppard Lumber* Co., 261 Ga. 145, 146, 401 S.E.2d 515, 516 (1991).

Even if the trial court had conducted an evidentiary hearing, however, the trial court had no jurisdiction to enter the Attorney's Fee Order. As set forth in Section I(A), *supra*, Georgia law speaks quite clearly to the "original and exclusive" jurisdiction of the legislative body of a county government, and the judicial reverence courts must give it. *See* O.C.G.A. § 36-5-22.1(a). No court can interfere with the budgetary or financial decisions of a legislative local government. *See Sirota v. Kay Holmes*, 208 Ga. 113, 115, 65 S.E.2d 597, 599 (1951)("[T]he judiciary cannot modify, amend, or repeal legislative action, nor concern itself with the wisdom of it; that it is a field in which only the legislative department may work."); *Turner County*, *supra*, 293 Ga. at 744, 749 S.E.2d at 690

(2013) ("Judicial review may not be expanded to substitute the court's decision for that of the parties.").[18]

Nothing in O.C.G.A. § 45-9-21(e) expands the trial court's jurisdiction to allow it to make legislative decisions about budget appropriations. Nothing in O.C.G.A. § 45-9-21(e) directs that the Clerk's legal fees must come from any particular fund, account, or budget. To the contrary, Georgia law plainly provides that the "governing authority" of each county has *exclusive* control over the property (to include monies) of the county, including those monies allocated to constitutional officers for the use and benefit of CCG citizens. O.C.G.A. § 36-5-22.1(a)(1) and (7).

The money in the Clerk's budget is county money in that it "belongs" to the "governing authority" or, at least, has been "appropriated for its use and benefit" – even though it is assigned to the Clerk's Office budget for use in pursuit of her constitutional mission. *Id.* It is the "governing authority" of the CCG that sees to

[18]The trial court ordered that the Clerk's attorney's fees be paid by the CCG. In her Complaint, the Clerk requested that the Individual Defendants be required to "reimburse" the CCG for any attorney's fees expended by the Clerk's counsel or Appellants' counsel. (R2-714, ¶ 172). To the extent these allegations purport to state a claim against Appellants, the trial court should have dismissed that claim as well. As set forth above, the Individual Defendants are immune from the Clerk's claims. But even if they were not, it is not for the Clerk to say how money of the county is allocated or whether the CCG should seek reimbursement of monies spent. That falls within the "original and exclusive" jurisdiction of the Council. O.C.G.A. § 36-5-22.1. The trial court had no jurisdiction to order otherwise.

it that expenditures incurred by each department or office are accounted for, applied to the correct account, and settled by those that have incurred them. *Id.*[19]

The CCG has no authority to pay the Clerk's attorney's fees and expenses from any fund other than amounts appropriated for the Clerk. The FY 2015 CCG budget was deliberatively set by the Council after a lengthy budgeting process. Money was appropriated to some 50 departments, boards, and authorities. Money to pay for the Clerk's attorney's fees has to come from somewhere. If the money is not coming from the amounts appropriated for the Clerk, that necessarily means the money must come from some other department, board, authority, office or use/purpose.

O.C.G.A. § 36-81-3(d) provides local governments with the ability to amend budgets to "adapt to a changing need." Under the CCG Charter, that requires a legislative budget amendment, and is plainly a legislative function. Charter § 7-404. The trial court took over this legislative function from the bench in entering its Attorney Fee Order. There is no authority supporting the trial court's exercise

[19]Due to the conflict asserted by the Clerk, the CCG cannot be placed in a position to review bills or determine the propriety of fees allegedly incurred by and due to the constitutional officer's independent legal counsel. The Clerk's legal counsel is a chosen vendor of the Clerk. Only she knows the instructions provided, the objective sought, and the value thereof. Only she can balance that legal value against her various constitutional duties under the budget set and determine its worth in pursuit of her overall mission. The CCG may not substitute its judgment for that of the Clerk in the expenditure of her funds.

of legislative authority, but there is plenty of authority to the contrary. *See, e.g.*, *Turner County*, *supra*, 293 Ga. at 744, 749 S.E.2d at 690, *Citizens & Southern*, *supra*, 231 Ga. at 425, 202 S.E.2d at 81("[C]ourts have no authority to interfere with the duties of a public official which are discretionary in nature."); *Lawson v. Lincoln County*, 292 Ga. App. 527, 529, 684 S.E.2d 900, 903 (2008) (to allow sheriff to operate "independent from the county's budgeting process would, in the extreme, undermine the county's broad discretion to exercise control over public property.").

The trial court's Attorney's Fee Order was a purely legislative act. Superior Courts in Georgia simply do not have jurisdiction to re-appropriate budgeted funds for counties when those funds have already been appropriated by the duly elected legislature. The trial court lacked jurisdiction to grant the relief sought by the Clerk, and the Attorney's Fee Order should be reversed.

CONCLUSION

For the aforementioned reasons, Appellants submit that rulings adverse to them in the Motion to Dismiss Order and the Attorney's Fee Order should be **REVERSED**.

Respectfully submitted, this 21st day of July, 2015.

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CERTIFICATE OF SERVICE

I do hereby certify that I am counsel for Appellants and that a true and exact copy of the foregoing document has been served upon counsel of record in the within matter by email, as follows:

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