

**IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA**

Georgia Division, Sons of)
Confederate Veterans, Inc., a)
Georgia Corporation;) CIVIL ACTION
The Confederate Memorial) 21CV5239
Camp #1432 of the Sons of) FILE NO. _____
Confederate Veterans;)
Richard Kevin Straut;)
Thomas M. McConnell;)
Eric Robert Howell;)
Joseph Newton;)
Philip J. Autrey)
Plaintiffs,)
V.)
BRYAN A. DOWNS,)
In his official capacity as City)
Attorney of the City of)
Decatur, Georgia,)
And)
ROBERT PATRICK, JEFF)
RADER, LARRY JOHNSON,)
STEVE BRADSHAW,)
MERIDA DAVIS JOHNSON,)
EDWARD TERRY, and)
LORRAINE COCHRAN-)
JOHNSON, Individually and)
in their official capacities as)
COUNTY COMMISSIONERS OF)
DEKALB COUNTY, GEORGIA)
Defendants.)

**PETITION TO RESTORE HISTORIC MONUMENT TO THE PUBLIC
SQUARE OF DEKALB COUNTY
AND
TO SET ASIDE THE PREVIOUS ORDER OF THE SUPERIOR COURT IN
CIVIL ACTION 20CV4505-3**

COME NOW the Georgia Division, Sons of Confederate Veterans, Inc., a Georgia Corporation (“the S.C.V.”), The Confederate Memorial Camp #1432 of Sons of Confederate Veterans, Richard Kevin Straut, Thomas M. McConnell, Eric Robert Howell , Joseph Newton, Philip J. Autrey, Plaintiffs in the above styled action who move this Honorable Court pursuant to O. C. G. A. §9-11-60(d) (Section 60(d) of the Civil Practice Act) and files this, its Complaint to set aside the judgment entered in **CIVIL ACTION 20CV4505-3** whereby Defendants got the Superior Court of the County—*in just three days of supposed litigation*-- to order the removal of the Confederate monument (“the Obelisk”) that had stood upon the Courthouse Square (“the Square”) since 1908.

Plaintiffs show:

1.

Plaintiff S.C.V. is an organization that honors the patriotic military service of those Georgians who fought in the war of 1861-65 (“the War”). It has numerous local camps of which Plaintiff The Confederate Memorial Camp #1432 of the Sons of Confederate Veterans (hereinafter “Camp #1432) is active in DeKalb County is a sub-unit highly concerned with the preservation and protection of historical monuments and markers commemorating the histories and the valor of the citizens of DeKalb County.

2.

Plaintiffs Richard Kevin Straut, Thomas M. McConnell, Eric Robert Howell, Joseph Newton, Philip J. Autrey, are all members of Camp #1432; Plaintiffs Newton and Autrey are residents of DeKalb County.

3.

Defendants Robert Patrick, Jeff Rader, Larry Johnson, Steve Bradshaw, Merida Davis Johnson, Edward Terry, and Lorraine Cochran-Johnson are members

of the Board of Commissioners of DeKalb County and are subject to the jurisdiction of this court.

4.

Defendant Bryan A Downs is the City Attorney of Decatur , Georgia, who was the Plaintiff in **CIVIL ACTION 20CV4505-3** , which said action was brought by him in his official capacity alleging that the Obelisk constituted a nuisance.

STANDING

5.

Plaintiffs have standing to bring this action pursuant to O.C.G.A. § 50-3-1 wherein historical monuments in Georgia are to be protected and may not be moved, destroyed, concealed or otherwise disturbed except as provided in said section.

6.

Plaintiffs also have the right and standing to bring this action under the provisions of O.C.G.A. § 9-11-60 [Relief from judgments] (a), (b) and (d).

PROCEDURAL HISTORY

7.

On June 10, 2020 Defendant Downs filed the City of Decatur's Complaint against DeKalb County claiming that the Obelisk belonged to Defendant DeKalb County and had become a nuisance in that it was being vandalized and threatened by mobs. The case was duly docketed and assigned the number **CIVIL ACTION 20CV4505-3**.

8.

To the best of Plaintiffs' knowledge and belief, because of Covid-19 restrictions the public could not attend or participate in the video hearing that was held June 12, 2020, and the video conference was not advertised to the public.

9.

Plaintiffs and those similarly situated were given no opportunity to move to intervene and no discovery was conducted.

10.

DeKalb County filed no response to the Complaint but did participate in the said video conference with Defendant Downs and Superior Court Judge Clarence Seeliger on June 12, 2020. On that very day, Judge Seeliger issued the order of June 12, 2020, ("the Order") Plaintiff now seeks to set aside.

11.

The general public was not given notice of or the opportunity to give input and/or apply for joinder so they might forestall and warn against the aforesaid rush to judgment and the mistakes made by the Court in promulgating the Order.

12.

The trial court entered the Order wherein it found that the Obelisk that is the subject of this suit was and is a "public nuisance". However there is not one scintilla of evidence that any member of the public – or indeed the public as a whole- has ever been harmed by any force, condition, or phenomenon- natural or unnatural- emanating or originating from the Obelisk and spreading out into the general public. Rather the claim of "public nuisance" has its basis in the intense dislike that many

people have for the Obelisk because of its close association with the Confederate States of America (“The Confederacy”), a political entity that existed on this portion of the North American continent from 1861 to 1865 and which the State of Georgia had joined after first passing its Ordinance of Secession on January 19, 1861.

13.

The Obelisk was moved off the Square around midnight on June 18, 2020.

Plaintiffs presume that it has been in storage somewhere ever since.

14.

A set forth below, Plaintiffs are entitled to have the Defendants ordered to restore the Obelisk to its place of honor from which they had it removed.

COUNT ONE: O.C.G.A. 9-11-60[Relief from judgments]

15.

Plaintiffs have the right and standing to bring this action under the provisions of O.C.G.A. § 9-11-60 [Relief from judgments] (a), (b) and (d), as follows.

16.

O.C.G.A. § 9-11-60 **(a) Collateral attack.** [provides that] A judgment *void on its face* may be attacked in any court by *any* person. [Emphasis added]

The Order is void on its face in that the Court on the first page of the Order. After making no findings of fact as required by O.C.G.A. § 9-14-49 (2010), Judge Seeliger found the Obelisk to be “*public nuisance*” even though O.C.G.A. § 41-1-3 clearly states:

Nuisances are either public or private. A public nuisance is one which damages *all* persons who come within the sphere of its operation, though it may vary in its effects on individuals. A private nuisance is one limited in its injurious effects to one or a few individuals. [emphasis supplied]

17.

The Order is also void upon its face as being in direct violation of O.C.G.A. § 41-1-8 , to wit:

(a) It is declared the public policy of this state to conserve, protect, and encourage the development of publicly owned cultural facilities. In order to encourage the establishment and maintenance of publicly owned cultural facilities, it is the purpose of this Code section to limit the circumstances under which a publicly owned cultural facility may be deemed to be a nuisance.

(b) Neither a publicly owned cultural facility nor a facility operated on lease from a publicly owned cultural facility nor any of the appurtenances thereof nor the operation thereof shall be or become a nuisance, either public or private, solely as a result of changed conditions in or around the locality of such cultural facility if such cultural facility has been in operation for one year or more.

18.

O.C.G.A. § 9-11-60 **(b)** Allows direct attack to set aside the aforesaid void order, providing:

A judgment may be attacked by motion for a new trial or motion to set aside. Judgments may be attacked by motion only in the court of rendition.

19.

O.C.G.A. § 9-11-60 **(d) (1)** provides that a motion to set aside a judgment may be based upon:

(1) Lack of jurisdiction over the person or the subject matter;

Once the Court hit or should have hit the definition of a *public* nuisance

[Paragraph 11 above] and the barriers to frivolous declarations thereof barred by

O.C.G.A. § 41-1-8 it lost jurisdiction over the case as brought.

20.

O.C.G.A. § 9-11-60 **(d) (2)** provides that a motion to set aside a judgment may be based upon:

(2) Fraud, accident, or mistake or the acts of the adverse party unmixed with the negligence or fault of the movant;

While reluctant to allege fraud on the part of the Defendants, Plaintiffs show that the Defendants' alleged litigation in CIVIL ACTION 20CV4505-3 with each other was rushed, collusive, and was misbegotten by mistake in that it was a "lawyer-too-clever" way to misuse O.C.G.A. § 41-1-3 quickly to accomplish a political goal without having to run afoul of O.C.G.A. § 50-3-1 (b) (2).

21.

Plaintiffs further note that actual fighting occurred around the Square and along DeKalb Avenue in July of 1864, during the War when Georgia troops attacked United States troops encircling Atlanta and cutting its rail links to the East.

22.

Neither Plaintiffs-Movants in this case nor any or all of those groups and DeKalb County citizens similarly-situated were negligent, nor had they notice or opportunity to be involved in the rushed, alleged litigation between the Defendants in CIVIL ACTION 20CV4505-3.

23.

Plaintiffs cannot be deemed to have "mixed in" the creation of the legal mistakes made by the court in issuing the Order in CIVIL ACTION 20CV4505-3.

24.

The lawsuit that resulted in the *public nuisance* finding was clearly not an adversarial proceeding and even has the earmarks of a collusive action on behalf of the parties therein who are named Defendants in this case. As such CIVIL ACTION

20CV4505-3 was not a “case or controversy” that the DeKalb County Superior Court was authorized to adjudicate, and it must now be dismissed because of that court’s lack of subject matter jurisdiction.

25.

Plaintiffs are entitled to have the Order in CIVIL ACTION 20CV4505-3 set aside.

COUNT TWO: DEFENDANTS’ VIOLATIONS OF O.C.G.A. § 50-3-1 (b) (2)

26.

All of the allegations set forth in the foregoing paragraphs of this Complaint are incorporated in this Count.

27.

The acts of Defendants aforesaid were and are in violation of O.C.G.A. § 50-3-1 (b) (2) prohibitions upon illegal hiding and removals of historic monuments.

28.

Plaintiffs are entitled to have Defendants ordered to restore the Obelisk to its former place of honor on the Square of DeKalb County.

29.

Plaintiffs are entitled to have Defendants ordered to reimburse them for the attorneys’ fees they incur in asserting these lawful claims.

WHEREFORE Plaintiffs pray that this Honorable Court grant this Motion to Set Aside and Annul the Order entered in **CIVIL ACTION 20CV4505-3** on June 12, 2020 and to grant them all other and further relief as to the court may appear just

under the extraordinary circumstances of this case, including granting Plaintiffs reasonable attorneys' fees.

This the 16th day of June, 2020.

Walker Chandler

Attorney for Plaintiffs
Georgia Bar No. 120675
101 Gleneagle Point
Peachtree City, GA 30269
Telephone: 770 468 6538
walker@chandlerandchandlerlaw.com