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**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA**

**RALPH TAYLOR,  
Plaintiff,**

v.

**Civil Action No. 07-C-398**

**CITY OF HARPERS FERRY  
A West Virginia Municipal Corp.,  
Defendants.**

RECEIVED

JUN 23 2010

JEFFERSON COUNTY  
CIRCUIT COURT

**ORDER**

THIS MATTER came on this 21<sup>st</sup> day of June, 2010, upon the Plaintiff's the Motion to Alter or Amend the Judgment Order Awarding Attorney's Fees to the Plaintiff filed by the Defendants and upon the Plaintiff's Responsive pleadings; upon the appearance of Ralph Taylor, by J. Michael Cassell, Esq.; upon the appearance of the City of Harpers Ferry, by Gregory Bailey, Esq.

This Court conducted a Bench Trial in this matter on September 15, 2009 during which the Court heard the testimony of various witnesses and admitted into evidence various exhibits. The Court heard the testimony of Mr. Robert DuBose who was a Town Council Member throughout the proceedings conducted by the Town Council of Harpers Ferry pertaining to Mr. Taylor's request to construct an access road to his property. The Court further heard the testimony of Mr. Daniel Riss who was a Council Member who remains on the Council through the present. The Plaintiff presented the testimony of Barry Bryan by video deposition. Mr. Bryan was a Council Member during the proceedings conducted by the Council regarding Mr. Taylor. Mr. Bryan was the Council Member designated to act as the contact person for the Council in these proceedings.

**The Court reviewed the pleadings and the Defendant's Motion to Alter or Amend the judgment of this Court awarding attorney's fees to the Plaintiff.**

**The Court finds that the Complaint alleges official misconduct in Paragraphs 6, 7, 8, 9, 10, 12, 13, and 16. The Complaint requests an award of attorney's fees and costs. Therefore, the Town of Harpers Ferry had notice that the Plaintiff had a claim for official misconduct and attorney's fees from the beginning of this case.**

**The Court entered an Order on December 4, 2009. The Order was filed in the Clerk's Office on December 7, 2009. The Order resolves all substantive issues between the parties with regard to Plaintiff's right to gain access to his property and the official misconduct of Mr. Robert DuBose and the Town Council of Harpers Ferry.**

**In Conclusion of Law No. 46 on page 34 the Order filed on December 7, 2009, the Court concludes as follows:**

**"The Court further concludes that the misconduct of Councilman DuBose tainted the entire process from beginning to end. This misconduct deprives Mr. Taylor of Due Process of Law in violation of his Constitutional Rights."**

**The Court also made the following Conclusion of Law at page 23 of the same Order in Conclusion of Law No. 21:**

**"In the present case, the Town's actions substantially and unreasonably deprive Mr. Taylor of access to his property by denying him access to a public street. The deprivation is illegal and unconstitutional. The conditions required of Mr. Taylor by the Town are unreasonable to the point of denying access because of the adsorbent associated costs."**

**In this case, the Court found that there was ample evidence of official misconduct on the part of Councilman DuBose and the entire City Council which would support the Plaintiff's Motion for Attorney's Fees and Costs. In Conclusion of Law No. 36 on pages 28 and 29 of the Order filed December 7, 2009, this Court**

summarizes a systematic and persistent effort by Councilman Dubose and others to wrongfully deprive Mr. Taylor of access to his property. This Court also found that there were no Ordinances, policies, requirements, or any other guidelines enacted by the Town of Harpers Ferry pertaining to the use of the unimproved streets by a landowner to gain access to his property. (See Findings of Fact No. 40 and 42, page 12 of this Court's Order filed December 7, 2009)

The Court further found that the Town had failed or refused to consult with or retain any design or construction professionals or engineering persons to determine what might be necessary and reasonable to require of Mr. Taylor in light of his request to gain access to his property. (See Findings of Fact No. 26, page 9 of the Court's Order) In addition, the Court makes reference to the Plaintiff's Trial Exhibit Binder which contained numerous emails which demonstrate the misconduct of Councilman DuBose and others.

The Town of Harpers Ferry participated with counsel in all proceedings in this matter. The Town of Harpers Ferry had a full opportunity to cross-examine the Plaintiff's witnesses and present evidence to rebut the allegations of misconduct presented by the Plaintiff.

Pursuant to the Court's Order filed December 7, 2009, the Plaintiff filed a Motion for an Award of Attorney's Fees and Costs on December 23, 2009.

The Court entered a Rule 22 Scheduling Order on December 28, 2009 providing to the Town of Harpers Ferry an opportunity to respond to the Plaintiff's Motion for Attorney's Fees and Costs. After the parties fully briefed the issues

**pertaining to attorney's fees, the Court entered an Order granting Plaintiff's Motion for Attorney's Fees and Costs.**

**At every phase of the proceedings in this case, the Town of Harpers Ferry fully participated and had every opportunity to present evidence and legal arguments in opposition to the Plaintiff's case in chief and the Motion for Attorney's Fees.**

**The Town of Harpers Ferry had a full opportunity to participate in the Bench Trial and the in the post Trial Motions. The cases cited by the Plaintiff are distinguishable on their facts in that the Trial Court in the cited cases failed to provide an opportunity for the participation of the party against whom the attorney's fees were granted.**

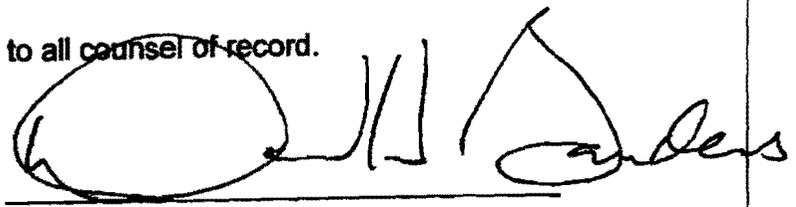
**Finally, the Court concludes that the Town Council of Harpers Ferry participated in the effort conducted by Councilman DuBose who wrongfully deprived Mr. Taylor of his Constitutional Rights. The evidence demonstrated that Mr. DuBose expressly stated that he intended to wrongfully deprive Mr. Taylor of access to his property. The Council understood that Mr. DuBose intended to act out on this wrongful purpose and did nothing to prevent it. In fact, the Court concludes that the Council actively supported this pattern of misconduct perpetrated by Mr. DuBose.**

**Accordingly, it is hereby ADJUDGED and ORDERED that the Defendant's Motion to Alter or Amend the Judgment Order Awarding Attorney's Fees to the Plaintiff is hereby denied. The objections and exceptions of the parties are noted to all adverse rulings.**

The Clerk shall enter the foregoing as of the day and date first above-written  
and shall transmit attested copies to all counsel of record.

2 cc's

M. Cassell  
G. Bailey  
6-30-10



Hon. David H. Sanders  
Judge of the Circuit Court of  
Jefferson County, West Virginia

Submitted by



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