

**STATE OF LOUISIANA,  
THROUGH ORLEANS PARISH  
CRIMINAL DISTRICT  
COURT, CLERK OF COURT,  
ARTHUR MORRELL**

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**NO. 2017-CA-0110  
  
COURT OF APPEAL  
  
FOURTH CIRCUIT  
  
STATE OF LOUISIANA**

**VERSUS**

**THE CITY OF NEW ORLEANS \* \* \* \* \*  
THROUGH ITS MAYOR,  
MITCHELL J. LANDRIEU**

**APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2016-09578, DIVISION "C"  
Honorable Sidney H. Cates, Judge**

**\* \* \* \* \***

**Judge Paula A. Brown**

**\* \* \* \* \***

(Court composed of Judge Joy Cossich Lobrano, Judge Sandra Cabrina Jenkins,  
Judge Paula A. Brown)

**LOBRANO,J.,CONCURS IN THE RESULTS**

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**AFFIRMED  
12/21/2017**

Appellant, the State of Louisiana, through Orleans Parish Criminal District Court, Clerk of Court, Arthur Morrell (“Clerk”), appeals the district court’s judgment(s) which denied his Petition for Writ of Mandamus (“the Petition”) and Motion for New Trial in favor of Appellee, the City of New Orleans, through its Mayor, Mitchell J. Landrieu (“the City”). For the reasons that follow, we affirm.

### FACTUAL AND PROCEDURAL HISTORY

The principal issue on appeal between these parties—whether the City has met its statutory duty to fund the Clerk’s Office—has been before this Court on three prior occasions.<sup>1</sup> To explain the extensive history behind this litigation, we adopt many of the facts outlined in *State of Louisiana v. City of New Orleans*, 2014-0421, pp. 1-4 (La. App. 4 Cir. 10/1/14), 151 So.3d 714-16 (“*Clerk II*”) as follows:

This matter comes before this Court after a remand to the district court in *State ex rel. Orleans Parish Criminal Dist. Court v. City of New Orleans ex rel. Landrieu*, 2012-1756 (La. App. 4 Cir. 10/23/13), 126 So.3d 762 [(*See Clerk I*)]. The facts giving rise to the first appeal were summarized as follows:

During 2012, a budget was proposed for the City to provide funding for the operation of the Clerk's Office, including certain personnel. After the 2012 budget was approved, Chief Administrative Officer, Andrew Kopplin (“Mr. Kopplin”), informed the Clerk of Court in a March 2012 letter that the City intended to “hold back ... over two percent” of the funding appropriated for the Clerk of Court for the 2012 fiscal year “in order to mitigate budget risks to the city.” Following the City's Revenue Estimating Conference in June 2012, Mr. Kopplin sent a letter in July to the Clerk of Court indicating that Mr. Kopplin was “directing the city budget office to reduce the [Clerk of Court's] spending authority by 3.8 percent.” Mr. Kopplin further stated in the letter that pursuant to

<sup>1</sup> See *State ex rel. Orleans Parish Criminal Dist. Court v. City of New Orleans ex rel. Landrieu*, 2012-1756 (La. App. 4 Cir. 10/23/13), 126 So. 3d 762; *State of Louisiana v. City of New Orleans*, 2014-0421 (La. App. 4 Cir. 10/1/14), 151 So.3d 714; and *State ex rel. Orleans Parish Criminal Dist. Court v. City of New Orleans ex rel Landrieu*, 2015-1089 (La. App. 4 Cir. 3/16/16), 192 So.3d 127.

his direction the temporary “hold back” would be “a permanent reduction.”

In October, the Clerk of Court informed Mr. Kopplin that the Clerk's Office did not have sufficient funds to buy office supplies. Consequently, Mr. Kopplin released additional funds to the Clerk of Court in order to purchase necessary office supplies.

Thereafter, the Clerk of Court filed a petition for writ of mandamus in the trial court alleging the City abused its discretion and acted arbitrarily and capriciously in refusing to fund the operations of the Clerk's Office. The Clerk of Court further alleged that state law mandates the City to pay various funds including the salaries of his office's employees in addition to other operating expenses. The City filed an exception of no cause of action alleging that the remedy of mandamus was not available in this case because the act of approving expenditures is inherently discretionary pursuant to the Home Rule Charter, which the trial court denied. After a trial on the merits, the trial court concluded that the Clerk of Court failed to establish how the City's discretionary decision to reduce the budget of the Clerk's Office under the Home Rule Charter was an abuse of discretion. Accordingly, the trial court denied the Clerk of Court's petition for writ of mandamus. The Clerk of Court then filed a motion for new trial, which was denied.

*Id.*, 2012–1756, pp. 2–3, 126 So.3d at 764.

The Clerk of Court appealed the trial court's denial of its request for a mandamus. During the pendency of that appeal, the Louisiana Legislature enacted La. R.S. 13:1381.7. This statute notes that “adequate funding of the office of Clerk of the Criminal District Court for the parish of Orleans is necessary for the efficient performance of the powers and duties required of a judicial officer of the state,” and provides that “[t]he amounts to be appropriated and paid by the city of New Orleans for expenses, including salaries and maintenance of constitutional officers, their deputies, subordinates, and employees shall not be reduced by the city of New Orleans without the consent of the legislature.” La. R.S. 13:1381.7 A.

Noting that the purpose of the newly enacted La. R.S. 13:1381.7 is “to clarify the City's duty to pay the

appropriated funding of the Clerk's Office as mandated by state statutes” and “the necessity for the City to provide adequate funding to the Clerk's Office,” this Court found the statute “to be interpretive law” with “retroactive application.” *Id.*, 2012–1756, p. 9, 126 So.3d at 768. The district court's denial of the Clerk of Court's petition was reversed, and the case was remanded to the district court “for application of La. R.S. 13:1381.7.” *Id.*, 2012–1756, p. 10, 126 So.3d at 768.

After remand, on November 18, 2013, the Clerk of Court filed a Motion entitled “Motion and Memorandum in Support to Set for Hearing to Determine Whether Defendant Has Met Its Obligations in Funding the Criminal Clerk of Court In Accordance With the Recent Ruling of the Fourth Circuit” (the “Motion”). In the Motion, the Clerk of Court alleges that the City “continues to refused [sic] to pay ‘the salaries of the deputy clerks appointed’ by [the Clerk of Court] as required by *La. R.S. 13:1372.*” (emphasis supplied). The Clerk of Court maintains that the City is “activity [sic] seeking to reduce the employees of the Clerk's office.” The Clerk of Court attached two documents to its Motion: this Court's opinion and a document entitled “Funding Summary,” which is neither authenticated nor explained in the Motion. In attaching the “Funding Summary” as an exhibit to the Motion, the Clerk of Court merely states that “in current budget allocations presented by the City to the City Council, the City seeks to reduce the Clerk's employee allocation from 90.49 to 83.49 which is in violation of the law, as well as the ruling of the appeal court.”

The trial court set a hearing on the Motion for December 10, 2013. The record does not contain an opposition by the City to the Motion, nor a transcript of the hearing of the Motion. By judgment dated December 17, 2013, the trial court found that “*La. R.S. 13:1381.7* prohibits the City under the Home Rule Charter from imposing a permanent budgetary hold back [sic].” The judgment then granted “the Petition for Writ of Mandamus” and ordered the City to “appropriate and fully fund the expenses, including the salaries of the employees and officers of the office of the Clerk of Criminal District Court for the 2012 fiscal year.” It further finds that “the City of New Orleans is prohibited from imposing a permanent budgetary hold back [sic] of the funding appropriated for the office of the Clerk of Criminal District Court for the 2012 fiscal year.”

From this judgment, the City appealed, and in its Petition for Suspensive Appeal, the City maintains that it “has already fully funded the Clerk's Office for 2012 and any funds held back subsequently were paid to the Clerk[,]” but the City appealed the judgment “out of an abundance of caution.” [footnotes omitted]

In *Clerk II*, this Court, once again, remanded this matter to the district court to determine whether the City had complied with its statutory obligation to fund the Clerk’s Office for the year 2012, and whether the City owed any additional funding to the Clerk’s Office for that year. 2014-0421, p. 6, 151 So.3d at 718.

*Clerk II* also addressed the district court’s conclusion that La. R.S. 13:1381.7 prohibits the City under the Home Rule Charter from imposing a permanent budgetary hold back. To the extent that the district court’s ruling found “the City may *never* later reduce the amounts it originally appropriates when it adopts its budget,” *Clerk II* vacated the ruling. 2014-0421, p. 8, 151 So.3d at 718. In interpreting whether La. R.S. 13:1381.7 prohibits the City from altering a City Council-approved budget, *Clerk II* opined:

La. R.S. 13:1381.7, construed together with Section 6-103(4), simply means that, while the City may alter its approved budget, if that alteration affects the City’s statutory obligation to fund the Clerk’s office, the City must seek advanced legislative consent before altering those statutorily mandated sums.

2014-0421, p. 8, 151 So.3d at 719.

On remand, the district court conducted an evidentiary hearing on November 6, 2014. On behalf of the Clerk, the district court heard testimony from the Clerk; Cheryl Bean (“Ms. Bean”), the Clerk of Human Resources Director; and Alisha Brumfield (“Ms. Brumfield”), the Clerk of Court Financial and Budget Director. Mr. Kopplin and Cary Grant, the Assistant CAO for budget and operations, testified on behalf of the City. After taking the matter under advisement, the

district court granted the Clerk's petition for writ of mandamus on June 25, 2015. The judgment decreed that the City owed the Clerk's Office \$141,000.50 for the year 2012, together with interest and costs. The City appealed the judgment.

On appeal, the judgment was affirmed. *See State ex rel. Orleans Parish Criminal District Court v. City of New Orleans ex rel Landrieu*, 2015-1089 (La. App. 4 Cir. 3/16/16), 192 So.3d 127 (*Clerk III*). In affirming the judgment, this Court adopted the district court's findings, which held, in part:

From all the evidence presented, the Court finds that the City of New Orleans failed to comply with its statutory obligation, pursuant to La. R.S. 13:1381.7, to fund the Orleans Parish Clerk of Criminal Court's Office for the year 2012. It was established that the adopted budget for the Clerk's office would have supported salaries for the 90.5 employees/deputy clerks necessary to properly run the office and that the adopted budget was reduced by 3.8% or \$141,600.50.<sup>2</sup> Therefore, the Court finds that the City of New Orleans owes the Orleans Parish Clerk of Criminal District Court \$141,600.50 for the year 2012.

2015-1089, pp. 3-7, 192 So.3d at 130-132.

Thereafter, on September 23, 2016, the Clerk filed the present Petition against the City, claiming the City had arbitrarily and capriciously refused to fund the Clerk's Office for fiscal years 2013, 2014, 2015, and 2016 at the level required by law to operate the Office. Paragraph 8 of the Petition stated in part, "defendant, City of New Orleans, through Mayor Landrieu, after paying a Judgment for breach [sic] of defendant's 2012 ministerial duty to fund Morrell's 90.5 employees, again breach [sic] their ministerial duty of funding the Orleans Parish Criminal District Court for the years 2013, 2014, 2015, and 2016 . . . ."

In response, the City filed an exception of lack of subject matter jurisdiction. The City argued that annual appropriations are valid only for the year in which

<sup>2</sup> The City Council appropriated \$3,726,329.00 ("\$3.7 million dollars") for the Clerk's Office in 2012. The City's 3.8% reduction resulted in a net loss of \$141,600.50.

they are made. As such, any dispute over the City's appropriations to the Clerk's Office for the fiscal years 2013, 2014, and 2015 was moot because any alleged funds owed could not be retroactively applied toward expenses that were neither appropriated nor expended during those years.

Both matters were heard on October 11, 2016. The Clerk reiterated that the City had failed in its statutory duty to fund the Clerk's Office at 90.5 employees from 2013 through 2016. He argued that the amounts appropriated caused his Office to be reduced to sixty employees; and alleged the level of underfunding for the combined years totaled \$2.4 million dollars.<sup>3</sup>

On its exception of lack of subject matter jurisdiction, the City re-urged the arguments submitted in its exception memorandum. In opposition to the merits of the Clerk's Petition, the City argued that it had consistently funded \$3.726 million dollars for the years 2013 through 2016—the exact amount allocated in 2012 and the sum deemed appropriate to fund 90.5 employees in the *Clerk III* decision. The City asserted that the Clerk had not put on any evidence to prove the amount funded was insufficient to hire 90.5 clerks for the years 2013-2016. Emphasizing that mandamus relief is an extraordinary remedy and other remedies were available to the Clerk, the City maintained the Clerk had not met his burden of proof to obtain a writ of mandamus.

On November 2, 2016, the district court overruled the City's exception of lack of subject matter jurisdiction and denied the Clerk's Petition. In response, the

<sup>3</sup> The Clerk indicated at the October 11, 2016 hearing that \$4.2 million dollars was required to fund the Clerk's Office, and maintained in its opposition brief to the City's lack of subject matter jurisdiction that \$2,421,027 million dollars was owed for "underfunded" years. This Court shall hereinafter round off that amount to \$2.4 million dollars.

Clerk filed a motion for new trial. On December 20, 2016, the district court denied the Clerk's motion for new trial. This appeal followed.

## **DISCUSSION**

On appeal, the Clerk's assigns the following two errors: 1) the district court erred in denying his Petition; and 2) the district court erred in denying his motion for new trial. The City's response on appeal includes its re-urged exception of lack of subject matter jurisdiction. Before addressing the merits of this case, we must first address whether this case is properly before this Court.

### ***Subject Matter Jurisdiction***

Appellate courts have the duty to determine, *sua sponte*, whether subject matter jurisdiction exists, even when the parties do not raise the issue. *Moon v. City of New Orleans*, 15-1092, 15-1093, p. 5 (La. App. 4 Cir. 3/16/16), 190 So.3d 422, 425. This Court lacks subject matter jurisdiction if the appeal as lodged does not contain a valid, final judgment. In determining whether the district court's judgment conveyed appellate jurisdiction in the present case, we must examine La. C.C.P. art. 1918. That article provides "[a] final judgment shall be identified by appropriate language." Our jurisprudence has established that "appropriate, decretal language" for a final judgment includes the name of the party in favor of whom the ruling is ordered, the party against whom the relief is ordered, and the relief that is granted or denied. *Bd. Of Supervisors of La. State Univ. v. Mid-City Holdings, L.L.C.*, 2014-056, pp. 2-3 (La. App. 4 Cir. 10/15/14), 151 So.3d 908, 910.

We note that the November 2, 2016 judgment on the Petition fails to specify the name of the party against whom the ruling is ordered and it fails to state the party in whose favor the remedy was granted. However, these jurisdictional flaws



are not fatal. The nature of the specific relief granted by the district court—denial of the writ of mandamus—can be determined from the judgment without reference to an extrinsic source, such as pleadings or reasons for judgment. Moreover, as there are only two parties to this litigation, it is clear as to the party in whose favor the judgment was rendered—the City—and the party against whom relief was denied—the Clerk. *See Conley v. Plantation Management Co., L.L.C.*, 2012-1510, p. 8 (La. App. 1 Cir. 5/6/13), 117 So.3d 542, 547, (where the Court found that a judgment that did not expressly name the defendant cast in judgment contained sufficient decretal language as there was only one remaining defendant and the final judgment determined the rights of the parties). Accordingly, we find the judgment contains sufficient decretal language to confer appellate jurisdiction.

***Exception of Lack of Subject Matter Jurisdiction***

The City's exception of lack of subject matter jurisdiction alleges that courts do not have subject matter jurisdiction to decide controversies where the judgment serves no useful purpose and gives no practical relief. *See Council of the City of New Orleans v. Sewerage & Water Bd. Of New Orleans*, 2006-1989 (La. 4/11/07), 953 So.2d 798. The City contends that any mandamus relief granted to compensate the Clerk for past budget shortfalls is effectively meaningless because the Clerk cannot take funds into the past to retroactively operate the Clerk's Office with an expanded staff. As such, the City argues the controversy is moot and this Court lacks jurisdiction to decide a moot issue.

Jurisdiction over the subject matter is the legal power and authority of a court to hear and determine a particular class of actions or proceedings based upon the object of the demand, the amount in dispute, or the value of the rights asserted. La. C.C.P. art. 2. The jurisdiction of a court over the subject matter of an action or

proceeding cannot be conferred by consent of the parties or waived; a judgment rendered by a court which has no jurisdiction over the subject matter of the action or proceeding is void. La. C.C.P. art. 3 and La. C.C.P. art. 925; *Boudreaux v. State, Dept. of Transp. and Development*, 2001-1329, p. 7 (La. 2/26/02), 815 So.2d 7, 12. An appellate court has discretion to consider an exception of lack of subject matter jurisdiction filed in the appellate court because the exception goes to the core of the validity of a judgment and is not subject to waiver. *Kerr-McGee v. McNamara*, 2000-0770, pp. 6-7 (La. App. 1 Cir. 6/22/01), 826 So.2d 1, 5.

Our courts require a justiciable controversy before exercising supervisory jurisdiction. In *Williams v. International Offshore Services, LLC.*, the appellate court discussed this requirement. The Court opined the following:

Cases submitted for adjudication must be justiciable, ripe for decision, and not brought prematurely. A justiciable controversy is one presenting an existing actual and substantial dispute involving the legal relations of parties who have real adverse interests and upon whom the judgment of the court may effectively operate through a decree of conclusive character.

2011-1240, p. 8 (La. App. 1 Cir. 12/7/12) 106 So.3d 212, 218 (citing *Women's Health Clinic v. State*, 2002-0016 (La. App. 1 Cir. 5/10/02), 825 So.2d 1208, 1210, writ denied, 2002-2002 (La. 11/1/02), 828 So.2d 586)).

In the instant case, the issue before the Court is whether the Clerk's Office is entitled to an alleged budgetary hold-back totaling \$2.7 million dollars over the course of fiscal years 2013-2016. We find this dispute presents a justiciable controversy. It offers an existing dispute between the City and the Clerk—parties with adverse interests—as to whether the City illegally withheld mandated funding over four years. Contrary to the City's assertion, a favorable ruling in favor of the Clerk's Office could result in monetary relief. Particularly, we note that the Clerk received over \$140,000.00 in 2016 for funds that were improperly withheld in

2012. *See Clerk III, supra*. For these reasons, this Court has the requisite subject matter jurisdiction needed to review this matter. The City’s exception of lack of subject matter jurisdiction is thereby overruled.

### ***Writ of Mandamus***

This Court discussed the purpose of a writ of mandamus in *St. Bernard Port, Harbor & Terminal Dist. v. Guy Hopkins Constr. Co., Inc.*, as follows:

The Supreme Court has explained that “[m]andamus is directing a public officer or a corporation or an officer thereof to perform any of the duties set forth in Articles 3863 and 3864.” *Aberta, Inc. v. Atkins*, 12-0061, pp. 2-3 (La. 5/25/12), 89 So.3d 1161, 1163 (citing La. Code Civ. Proc. art. 3861 ). A writ of mandamus may be issued in all cases where the law provides no relief by ordinary means. La. Civ. Code Proc. art. 3862 [emphasis added]. Pursuant to La. Code Civ. Proc. art. 3863, “[a] writ of mandamus may be directed to a public officer to compel the performance of a ministerial duty required by law.” A ministerial duty is a “simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law.” *Hoag*, 2004–0857, p. 7, 889 So.2d at 1024. The Supreme Court has further explained that a ministerial duty “contains no element of discretion.” *Aberta*, 2012–0061, pp. 2–3, 89 So.3d at 1163 (quoting *Newman Marchive Partnership, Inc. v. City of Shreveport*, 07-1890 (La. 4/8/08), 979 So.2d 1262, 1269 ). A writ of mandamus, therefore, may not be issued to compel a public official to exercise discretionary authority. *Constr. Diva, L.L.C. v. New Orleans Aviation Bd.*, 2016-0566, p. 13 (La.App. 4 Cir. 12/14/16), 206 So.3d 1029, 1037 [citations omitted].

2016-0907, pp. 13-14 (La. App. 4 Cir. 4/5/17), 220 So.3d 6, 15, *writ denied sub nom. St. Bernard Port, Harbor & Terminal Dist. v. Got Hopkins Constr. Co., Inc.*, 2017-0746 (La. 9/15/17), 225 So.3d 1088.

Established jurisprudence provides that a writ of mandamus is an extraordinary remedy that is to be used sparingly. *A.M.E. Disaster Recovery Services, Inc. v. City of New Orleans*, 2010-1775, p. 8 (La. App. 4 Cir. 8/24/11), 72 So.3d 454, 459. A writ of mandamus should only be issued in cases where the law provides no relief by ordinary means or where the delay involved in obtaining

ordinary relief may cause injustice. La. C.C.P. art. 3862. “Mandamus will not lie in matters in which discretion and evaluation of evidence must be exercised; the remedy is not available to command the performance of an act that contains any element of discretion, however, slight.” *A.M.E. Disaster Recovery Services*, 2010-1775, p. 8, 72 So.3d at 459 (quoting *Hamp’s Const., LLC v. Housing Authority of New Orleans*, 2010-0816, p. 4 (La. App. 4 Cir. 12/01/10)). A mandamus is to be used only when there is a clear and specific legal right to be enforced or a duty to be performed. *Baldone v. Terrebone Parish Registrar of Voters*, 2015-1356, pp. 4-5 (La. App. 1 Cir. 9/21/15) 182 So.3d 1005, 1008 (citing *Bonvillian v. Department of Ins.*, 2004-0332 (La. App. 1st Cir.2/16/05), 906 So.2d 596, 599, writ not considered, 2005-0776 (La.5/6/05), 901 So.2d 1081).

An appellate court’s review of a district court’s denial of a request for mandamus is under the abuse of discretion standard. *A.M.E. Disaster Recovery Services*, 2010-1755, p. 9, 72 So.3d at 460. “An appellate court will grant a writ of mandamus only when there is a usurpation of judicial power or clear abuse of discretion.” *Construction Diva, LLC v. New Orleans Aviation Board*, 2016-0566, pp. 13-14 (La. App. 4 Cir. 12/14/16), 206 So.3d 1029, 1037 (citing *Wallace C. Drennan, Inc. v. Sewerage & Water Board of New Orleans*, 2000-1146, pp. 3-4 (La. App. 4 Cir. 10/3/01), 798 So.2d 1167, 1171)).

Here, the Clerk asserts that the City has failed in its statutory duty to properly fund the Clerk’s Office for the mandated 90.5 employees for fiscal years 2013-2016, resulting in a cumulative short-fall of \$2.4 million dollars and a shortage of sixteen employees. The City counters that it has not reduced the Clerk’s funding since it withheld 3.8%—which created the \$141,600.50 shortfall—from his City Council-approved budget of \$3.726 million dollars in

2012. Thereafter, the City points out that it replaced those funds as ordered by the district court in its June 25, 2014 judgment and affirmed by this Court in *Clerk III*. The City notes that at the time of the *Clerk III* judgment, \$3.726 million dollars was determined to be the amount sufficient to employ 90.5 employees.

The record shows the district court offered the following reasons for denying the Clerk's Petition:

It is undisputed that the Clerk's annual appropriation has not been reduced and there have been no budgetary hold-backs since 2012; the annual appropriation has remained at \$3.726 million, which is the amount determined in 2012 to be adequate to fully fund 90.5 employees. The City did not violate La. R.S. 13:1371.7; the amounts appropriated and paid by the City for expenses, including salaries and maintenance of constitutional officers, their deputies, subordinates, and employees were not reduced by the City in 2013, 2014, 2015, or 2016.

As previously referenced, in affirming and adopting the district court's judgment and reasons for judgment in *Clerk III*, this Court also espoused that the adopted budget for 2012 would have supported 90.5 employees. 2015-1089, p. 7, 192 So.3d at 132.

Upon review, we find that the Clerk has failed to establish that a writ of mandamus should have issued in this matter. A factual dispute exists as to the amount required to fund 90.5 employees and whether the 3.726 million dollars the City funded the Clerk is sufficient to meet its statutory obligation to fund the Clerk's Office. This dispute necessarily requires the evaluation of evidence, weighing the credibility of witnesses, and exercising judicial discretion—functions which are not appropriate for entitlement to mandamus relief. *See Hamp's Const., L.L.C. v. Housing Authority of New Orleans, supra*. The Clerk has simply not proven he has a clear and specific right to compel the performance of a ministerial duty on the part of the City.

Accordingly, we find the district court did not abuse its discretion in denying the Clerk's Petition for mandamus relief. This assignment of error lacks merit.

***Motion for New Trial***

The Clerk argues that the district court erred in denying his motion for new trial. La. C.C.P. art. 1972 provides in pertinent part that: “(1) a new trial shall be granted . . . when the verdict or judgment is clearly contrary to the law and the evidence; (2) when the party has discovered, since the trial, evidence important to the cause, which he could not in due diligence, have obtained before or during the trial.”

The district court held a contradictory hearing on the Clerk's motion for new trial. After the hearing, both parties were ordered to submit post-trial briefs. The Clerk's post-trial brief included the affidavits of two deputy clerks from the Clerk's Office—Ms. Bean, who averred that the City has never fully funded the Clerk's Office since 2012; and Ms. Brumfield, who attested that the Clerk's Office had not been funded for 90.5 employees since 2011. The Clerk also attached correspondence from Mr. Kopplin, the City's CAO, as well as several requisition forms in which the Clerk requested more employees.

Upon our review of the record, we find the district court properly denied the motion for new trial. The “evidence” attached to the Clerk's motion, particularly the affidavits from the deputy clerks and the requisition forms, was not newly discovered evidence required to grant a new trial motion. Rather, the evidence produced was clearly within the custody of the Clerk's Office and thereby, available at the hearing on the Petition on October 11, 2016. By the Clerk's own admission, it chose not to offer any objective evidence or testimony at this hearing. Next, even if considered, the evidence offered does not conclusively prove that the

City did not meet its statutory obligation to fund the Clerk's Office from 2012-2016. In denying the motion for new trial, the district court opined "the plaintiff failed to meet his burden of establishing that the city of New Orleans failed to appropriate and fully fund the expenses [of the Clerk's Office]."

It is well settled jurisprudence that a district court's judgment in denying a motion for new trial should not be reversed unless the appellate court finds the district court abused its discretion. *Zatarain v. WDSU*, 1995-2600 (La. App. 4 Cir. 4/26/96), 673 So.2d 1181, 1183. Finding no abuse of the district court's wide discretion, this assignment of error is without merit.

#### **CONCLUSION**

Based on the foregoing reasons, the judgment of the district court is affirmed.

**AFFIRMED**