

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

*** NO. 2017-CA-1051
* COURT OF APPEAL
* FOURTH CIRCUIT**

VERSUS

*** STATE OF LOUISIANA**

**CITY OF NEW ORLEANS,
THROUGH THE CITY
COUNCIL**

**LOVE, J., CONCURS IN PART; DISSENTS IN PART AND ASSIGNS
REASONS**

I respectfully concur in part and dissent in part. I agree with the majority’s decision to convert the appeal to an application for supervisory review. However, unlike the majority, I find mandamus may be issued in this case and would remand the matter for an evidentiary hearing. I write separately to address my appreciation of the relevant facts giving rise to the matter before us.¹

The Clerk alleged in his petition that pursuant to La. R.S. 13:1371.2, he has a substantive right, with the approval of the judges of Criminal District Court, to appoint deputy clerks “as are necessary to properly conduct business” of the Clerk’s Office. He maintains that since at least 2005, 90.5 full time deputy clerks are necessary for the Clerk’s Office to properly operate. The Clerk avers that he originally submitted a 2017 budget for 90.5 deputy clerk positions; however, the City approved and adopted a budget for the Clerk’s Office which only covered 75 full time positions. The Clerk asserts in his petition that the City has failed to meet

¹ The history surrounding this litigation is summarized by this Court in *State ex rel. Orleans Parish Criminal Dist. Court v. City of New Orleans ex rel. Landrieu*, 12-1756 (La. App. 4 Cir. 10/23/13), 126 So.3d 762 (“*Clerk I*”); *State ex rel. Orleans Parish Criminal Dist. Court v. City of New Orleans ex rel. Landrieu*, 14-0421 (La. App. 4 Cir. 10/01/14), 151 So.3d 714 (“*Clerk II*”); *State ex rel. Orleans Parish Criminal District Court v. City of New Orleans ex rel. Landrieu*, 15-1089 (La. App. 4 Cir. 3/16/16), 192 So.3d 127 (“*Clerk III*”); and *State through Morrell v. City of New Orleans through Landrieu*, 17-0110 (La. App. 4 Cir. 12/21/17), 234 So.3d 1071 (“*Clerk IV*”).

its statutory obligation of paying the salaries of 90.5 necessary deputy clerk positions pursuant to La. R.S. 13:1381.7. He further claims that the failure to put the necessary replacement employees on the payroll is a reduction of the Clerk's Office's funding. Moreover, without adequate funding to account for 90.5 full time employees, the Clerk is prevented from filling the vacancies and from properly operating his office.

Pursuant to La. R.S. 13:1371.2(B) "[t]he clerk of the Criminal District Court for the parish of Orleans shall appoint, with the approval of the judges of the court, such deputy clerks as are necessary to properly conduct the business of his office and of the court." The salaries of the Clerk's Office employees "shall be paid by the city of New Orleans." La. R.S. 13:1372. Additionally, La. R.S. 13:1381.7(A) states that adequate funding of the Clerk's Office "is necessary for the efficient performance of the powers and duties required of a judicial officer of the state." "To foster the efficient performance of the powers and duties of the Clerk of Court and his Office, the Louisiana legislature mandates that the City pay "all expenses, including salaries and maintenance of constitutional officers, their deputies, subordinates, and employees" and "shall not be reduced by the City of New Orleans without the consent of the legislature." La. R.S. 13:1381.7(A).

The Clerk asserts that 90.5 full time employees are necessary to properly conduct business, and the City has failed in its statutory duty to adequately fund the Clerk's Office for the mandated 90.5 employees for the 2017 fiscal year. The Clerk submitted a budget of \$5,203,697.00 for 2017; however, the City approved and adopted a budget for the Clerk's Office for \$3,726,330.00. The Clerk alleges that the City-approved budget of \$3.726 million only covered 75 full time positions and not the 90.5 positions that the Clerk maintains are "necessary to properly conduct business" of his office. The Clerk avers that by failing to account for the replacement of the fifteen vacant positions on the payroll, the City has reduced the

funding required to properly operate the Clerk's Office, in violation of La. R.S. 13:1381.7.

The City counters that it has fully funded the Clerk's Office. It alleges that the trial court correctly found that it was undisputed that the City has not reduced the Clerk's funding since it withheld 3.8% in 2012 from the Clerk's Office budget of \$3.726 million and that the annual appropriation of \$3.726 million to the Clerk has held steady since that time. The City contends that because it did not reduce the Clerk's appropriation for 2017 below the amount provided in 2012, the trial court correctly held that the Clerk failed to show that there was a reduction in the budget and as a result that the City violated a ministerial duty.

The City also points out that this Court, in *Clerk III*, recognized the trial court's finding that the adopted budget for 2012 would have supported salaries for the 90.5 employees/deputy clerks.² However, the Clerk states that the City is mistaken in its assertion. He has continually maintained that since 2012 vacancies in necessary positions have left the Clerk's Office understaffed. Thus, the Clerk argues that \$3.726 million was never enough to fund the salaries of 90.5 employees because since 2012 the Clerk's Office has never had the 90.5 employees required to properly operate. Without funding to account for 90.5 employees, the Clerk asserts that he is barred from exercising his authority under La. R.S. 13:1371.2(B) to fill vacancies in his support staff.

I am also careful to note that those findings relative to the City's funding of the Clerk's Office that the City relies on were exclusive to the year 2012 alone. Even still, since that time, the Clerk avers his office has experienced staff turnover as a result of employee termination, resignation, and retirement. Consequently, positions within the Clerk's Office went vacant and remain unfilled. The Clerk asserts that there were 15 positions that remained vacant in 2017. Therefore, I

² *Clerk III*, 15-1089, p. 7, 192 So. 3d at 132.

disagree with the City's argument that the Clerk attempts to re-litigate the factual findings made with respect to the 2012 budget.

The assumption is that in order for a reduction in funding to occur in this case there must be a withholding of an approved budget, as in 2012. The City's argument of the same, as adopted by the trial court and the majority, oversimplifies the issue. The Clerk's operating budget is susceptible to a myriad of factors including but not limited to staff turnover, economic influences, and legislative changes. To compare the factual circumstances of the 2012 litigation to the present action draws a false conclusion that as long as the amount appropriated remains constant (in this case \$3.726 million) there can be no reduction in the Clerk's Office funding.

The history of this litigation demonstrates that underlying factual issues remain. At the heart of the parties' dispute is the amount required to fully fund 90.5 employees and whether the \$3.726 million the City has funded is sufficient to satisfy its ministerial duty to fund the Clerk's Office. In this way, the City is correct in its assertion in brief that "[i]t is neither fair nor efficient for a party to be forced to continually reestablish the same facts over multiple bouts of litigation." It is evident that if the underlying factual issues remain unresolved, so is a resolution for the parties involved.

This Court addressed this concern in *Clerk IV*, finding for the years 2013 through 2016 "[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." *Clerk IV*, 17-0110, p. 13, 234 So.3d at 1080. This Court found mandamus inappropriate because the petition for writ of mandamus, which sought redress for four years-worth of alleged underfunding was, as the City describes, "sweeping in scope." The evaluation of evidence and weighing the credibility of witnesses, in that

respect, was inappropriate for entitlement of mandamus relief.³ I find the present matter distinguishable as it is limited to the 2017 fiscal year.

The question becomes whether mandamus is permitted in this action. Courts have consistently held that mandamus is permitted even where other means of relief exist if the slowness of an ordinary proceeding would likely cause such a delay as to hamper the administration of justice. La. C.C.P. art. 3862. The Clerk testified, during the pendency of this litigation and as a result of his inability to fill the vacancies in his office, functions of his office had to be reduced. Likewise, the underlying factual dispute between the parties has been ongoing since 2012. The history of this litigation and my finding that underlying factual issues remain, which are essential to the ultimate determination of whether the City has met its ministerial duty under existing state laws, proves that while relief may be sought through the use of an ordinary proceeding, the delay of the process would hamper the administration of justice.

La. R.S. 13:1381.7(A) was enacted to clarify “the necessity for the City to provide adequate funding to the Clerk’s Office.” *Clerk I*, 12-1756, p. 8, 126 So.3d at 767. “Adequate funding plays an important role in the ‘efficient performance of the powers and duties of a judicial officer of the state’ in addition to the ‘judicial efficiency’ and the protection and promotion of the ‘lives, health, morals, comfort, and general welfare of people as a whole.’” *Id.* (citing La. R.S. 13:1381.7(A)). Therefore, because the delays involved in obtaining ordinary relief will cause injustice, I find mandamus may be issued in this case. La. C.C.P. art. 3862. However, because underlying factual issues must be resolved in order to determine whether the City has satisfied its ministerial duty to adequately fund the Clerk’s Office and therefore whether mandamus is warranted, I find remand necessary.

³ The appropriateness of filing a petition for writ of mandamus as compared to seeking declaratory judgment or relief through an ordinary proceeding was never addressed by this Court until *Clerk IV*.

See Marshall v. West Baton Rouge Parish Fire Protection Dist. Number 1, 08-1576 (La. 1/9/09), 998 So.2d 85 (vacating and setting aside trial court's judgment granting writ of mandamus and remanding for evidentiary hearing to determine underlying factual issues).

The ultimate issue to be decided is whether the City has met its ministerial duty under existing state laws to provide adequate funding to the Clerk's Office. Essential to this finding is a determination of what amount is required to fund 90.5 employees and whether the amount the City funded is sufficient to meet its statutory obligation to fund the Clerk's Office. In that the trial court made no determinations regarding these factual issues, in line with *Marshall*, I would vacate and set aside the trial court's denial of the Clerk's writ of mandamus and remand for further proceedings. On remand, I would order the trial court to take evidence, hear testimony, and make factual findings regarding what amount is required to adequately fund 90.5 employees and whether the City has satisfied its ministerial duty to fund the Clerk's Office.