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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 23-762

Filed 16 April 2024

Ashe County, No. 17 CVS 374

STATE OF NORTH CAROLINA, *ex rel.* TOM E. HORNER, DISTRICT ATTORNEY  
FOR THE 23<sup>RD</sup> PROSECUTORIAL DISTRICT,

v.

TERRY BUCHANAN, SHERIFF OF ASHE COUNTY.

Appeal by movant-appellant from order entered 15 March 2023 by Judge R. Gregory Horne in Ashe County Superior Court. Heard in the Court of Appeals 6 February 2024.

*Grace, Tisdale & Clifton, P.A., by Christopher R. Clifton for the appellee Tom E. Horner.*

*Ronnie M. Mitchell and David A. Wijewickrama for the appellees Terry Buchanan and Ashe County.*

*Stevens Martin Vaughn & Tadych, PLLC, by Michael J. Tadych and Kathleen O'Malley for the movant-appellant Gray Media Group, Inc.*

DILLON, Chief Judge.

Movant-appellant, Gray Media Group, Inc. d/b/a “WBTV”, appeals from an order denying its petition to unseal exhibits used in the removal proceedings of former

Ashe County Sheriff Terry Buchanan. The trial court denied WBTV's petition. We affirm the trial court's order.

I. Background

There are three matters associated with WBTV's efforts to obtain access to sealed documents associated with an investigation and criminal prosecution of Mr. Buchanan, who, at the time, was the Sheriff of Ashe County.

The first matter is a criminal matter, 17 CRS 279-84. On 23 October 2017, Mr. Buchanan was indicted for several crimes after an investigation by the State Bureau of Investigation (the "SBI").

The second matter is this present matter, 17 CVS 374. On the same day Mr. Buchanan was indicted, the State of North Carolina, through the Ashe County District Attorney, filed a petition pursuant to N.C. Gen. Stat. § 128-17 to suspend Mr. Buchanan and remove him from office.

The third matter is a civil action filed, 17 CVS 397, on 7 November 2017, two weeks after Mr. Buchanan was indicted, seeking access associated with Mr. Buchanan's criminal matter.

In this present action, the removal proceeding, the trial court sealed the exhibits to the petition, though not the petition itself. The exhibits included evidence related to the criminal investigation. On 5 February 2018, Mr. Buchanan and Ashe County entered into a settlement agreement which provided that Mr. Buchanan

would tender his resignation from office and that the State would dismiss the criminal charges against Mr. Buchanan in 17 CRS 279-84. That same day, the trial court entered a consent order dismissing the petition with prejudice.

On 12 February 2019, the trial court in Mr. Buchanan’s criminal matter entered an order expunging all records of the investigation, apprehension, and prosecution of Mr. Buchanan.

The exhibits to the petition in this present matter, the removal petition, remain sealed.

On 10 November 2022, WBTV moved to intervene in this matter and for an order unsealing the exhibits. In its motion, WBTV contended that it had the constitutional right to the exhibits. WBTV subsequently filed an amended motion, requesting access to the exhibits pursuant to N.C. Gen. Stat. § 1-72.1, which provides a procedure by which a non-party may seek the unsealing of documents in a civil action. On 15 March 2023, after a hearing on the matter, the trial court entered an order declining to unseal the exhibits. WBTV appeals.

## II. Analysis

In its order, the trial court noted that N.C. Gen. Stat. § 1-72.1 is not the appropriate vehicle for WBTV to seek the records in *this proceeding*. The court concluded that N.C. Gen. Stat. § 1-72.1 did not provide it jurisdiction in the present proceeding to act on WBTV’s request as this proceeding is not a “civil proceeding.” That statute provides that:

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Any person asserting a right of access to a *civil judicial proceeding* or to a judicial record in that proceeding may file a motion in the proceeding for the limited purpose of determining the person’s right of access.

N.C. Gen Stat. § 1-72.1(a) (2021) (emphasis added).

Our Supreme Court has recognized that disciplinary proceedings initiated against a judge or justice are neither civil nor criminal. *See In re: Nowell*, 293 N.C. 235, 241, 237 S.E.2d 246, 250–51 (1977). Instead, disciplinary proceedings are “merely an inquiry into the conduct of one exercising judicial power to determine whether he is unfit to hold a judgeship.” *Id.* That Court came to the same conclusion regarding removal proceedings against a district attorney, recognizing that they are *sui generis*, because such proceedings are “neither a civil suit nor a criminal prosecution.” *See In re Spivey*, 345 N.C. 404, 418, 480 S.E.2d 693, 701 (1997).

Our Court has also held that a proceeding to remove a sheriff does not fall under Chapter 1A (which governs civil actions), or Chapter 15A (which governs criminal actions), and that as a result, “actions brought pursuant to the provisions of G.S. §§ 128-16 through -20” are “neither civil nor criminal”. *See State ex rel. Leonard v. Huskey*, 65 N.C. App. 550, 552–54, 309 S.E.2d 726, 727–29 (1983). Our Court mirrored the language of our Supreme Court in *In re Nowell*, concluding that proceedings to remove a sheriff are “merely an inquiry into the conduct of the officeholder to determine whether he is unfit to continue in office”. *See id.* We came to the same conclusion three years later in *State v. Felts*, 79 N.C. App. 205, 209, 339

S.E.2d 99, 101 (1986).

We do not see any distinction concerning why removal proceedings initiated against a sheriff should be treated any differently than removal proceedings against a district attorney; both proceedings are *sui generis*. Accordingly, we agree that N.C. Gen. Stat. § 1-72.1 does not provide WBTB a procedure *in this matter* to move that the sealed records be unsealed.

The trial court, otherwise, ordered that the petition remain sealed in this matter. In so holding, the trial court noted that unsealing the records would conflict with the decision of another judge in the criminal matter to expunge the records. Also, the trial court relied upon the pending civil action, in which WBTB seeks essentially the same relief and decreed that its order was without prejudice to a request by the trial judge in the civil action from having access to the exhibits. We conclude that the trial court did not reversibly err in ordering the exhibits containing matters related to Mr. Buchanan's criminal matters to remain sealed.

### III. Conclusion

WBTB intervened, seeking an order that certain documents pertaining to Mr. Buchanan's criminal matter be unsealed *in this present proceeding*. However, WBTB previously filed a separate civil action seeking essentially the same relief. The trial court concluded the trial court judge lacked jurisdiction under N.C. Gen. Stat. § 1-72.1 to grant WBTB relief, as this matter is not civil in nature. We agree. And we otherwise affirm the trial court's order decreeing that its previous order, sealing the

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exhibits, remain in full force and effect.

AFFIRMED.

Judges FLOOD and THOMPSON concur.

Report per Rule 30(e).