

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
September 17, 2008 Session

DON R. MOSES v. CITY OF JELICO, TENNESSEE

**Appeal from the Circuit Court for Campbell County
No. 13937 John D. McAfee, Judge**

Filed January 26, 2009

No. E2008-00004-COA-R3-CV

The issue in this case is whether the Tennessee General Assembly may delegate to a municipality its constitutional authority to vest judicial power in a court by establishing and ordaining a court. After review, we affirm the trial court's ruling that the Jellico City Court was not validly created by Chapter 167 of the Private Acts of 2002 and the subsequent Jellico city ordinance because it resulted from an impermissible delegation of the Tennessee General Assembly's constitutional authority to establish and ordain a court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

SHARON G. LEE, SP. J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Michael G. Hatmaker, Jacksboro, Tennessee, for the Appellant, Don R. Moses.

Jon G. Roach, Knoxville, Tennessee, for the Appellee, City of Jellico, Tennessee.

OPINION

I. Background

In 2002, the Tennessee General Assembly enacted the charter of the City of Jellico as Private Chapter No. 167 (House Bill No. 3289) of the Private Acts of 2002. The act provided the following in pertinent part:

This act shall constitute the whole charter of the City of Jellico, Tennessee, repealing and replacing the charter provided by Chapter 101 of the Private Acts of 1998, and subsequent acts amending such charter.

* * *

SECTION 1.04. Corporate Powers. The city shall have the power to:

* * *

(29) Establish a city court and the office of city judge and determine the jurisdictional powers, authority and qualifications thereof in accordance with, and pursuant to, Tennessee Code Annotated, Section 6-4-301[.]

Id.

At the time of the passage of Chapter No. 167 of the Private Acts of 2002, the City was governed by an elected board of Mayor and Aldermen. The Jellico Board of Mayor and Aldermen adopted Ordinance 7-2002 on August 1, 2002, stating in pertinent part as follows:

Section 1. Pursuant to Private Chapter 167 Article 1, Section 29 of the Private Acts of 2002 of the Tennessee Legislature, there is hereby established, a city court and the office of city judge as authorized by Tennessee Code Annotated 6-4-301 et seq.

Section 2. The city judge shall be vested with the judicial power and functions of the General Sessions Court as set forth in Title 40 of the Tennessee Code Annotated.

Section 3. The city judge shall be elected in the same manner as a judge of an inferior court and shall meet the constitutional requirements for a judge of an inferior court.

Section 4. The initial term of office shall be a continuation of the city court previously established by Private Chapter 101 of the Tennessee Legislature and the said term shall expire in the year 2006. The 2002 August General Election shall be to fill the unexpired term of the office of Judge.

* * *

Section 7. The compensation of the city judge shall be fixed by ordinance.

On August 3, 2006, the plaintiff, Don. R. Moses, was elected Jellico City Judge. The Jellico Board of Mayor and Aldermen passed an ordinance effective September 1, 2006, the same day Mr. Moses ostensibly took office, providing that “the compensation of the Judge for the City of Jellico Court for the term beginning September 1, 2006, shall be established at a sum equal to 75% of the gross compensation for the General Sessions Court Judge for Campbell County, Tennessee . . . and thereafter as same may be amended or adjusted from time to time by the Tennessee Legislature.”

Approximately three months later, disputes arose between City officials and Mr. Moses regarding what kinds of cases the City Court should hear and what the salary of the City Judge should be. According to Mr. Moses, the City “has made allegations that it will curtail the judge’s authority to hear cases to the extent that [Mr. Moses] will hear only city offenses if he accepts a pay reduction, otherwise [the City] will abolish its court altogether.” On June 29, 2007, Mr. Moses filed a complaint requesting the trial court to determine whether the City has the authority to curtail (1) the City Court’s jurisdiction such that the court would hear only municipal offenses and (2) his salary as City Judge.

The City answered and counterclaimed for declaratory judgment, arguing, among other things, that the City Court was not validly created by Chapter 167 of the Private Acts of 2002 (Jellico’s charter) because in it the General Assembly impermissibly attempted to delegate its constitutional authority to ordain and establish an inferior or corporation court. Following a hearing, the trial court agreed with the City, finding as follows:

1. Article VI, Section 1 of the Constitution of the State of Tennessee requires that both inferior courts and corporation courts be established by acts of the General Assembly.

2. Section 1.04(29) of Chapter 167 of the Private Acts of 2002 does not establish a city or corporation court and the office of the city judge, but purports to delegate to the City the power to establish a city court and office of city judge. Thus, Section 1.04(29) of Chapter 167 of the Private Acts of 2002 constitutes an unlawful delegation of the power and authority of the General Assembly to create an inferior or corporation court.

3. Ordinance No. 7-2002 is invalid due to the fact that Article VI, Section 1 of the Constitution of the State of Tennessee requires that both inferior courts and corporation courts and their jurisdiction be established by action of the General Assembly and that [the act] purporting to delegate that authority to the City is an unlawful delegation of that power.

4. The City of Jellico exists without a city court and a city judge.

* * *

6. The Plaintiff has since September 1, 2006 been serving as a de facto city judge and all actions taken in good faith by the Plaintiff while purporting to serve as the city judge of the City of Jellico shall be considered valid.

Mr. Moses has appealed the trial court’s decision.

II. Issue Presented

The issue presented is whether the trial court erred in ruling that the Jellico City Court was not validly created by Chapter 167 of the Private Acts of 2002 and the subsequent City ordinance 7-2002 because it resulted from an impermissible delegation of the Tennessee General Assembly's constitutional authority to establish and ordain a court.

III. Analysis

In a non-jury case such as this one, we review the record de novo with a presumption of correctness as to the trial court's determination of facts, and we must honor those findings unless the evidence preponderates to the contrary. Tenn. R. App. P. 13(d); *Union Carbide v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993). The trial court's conclusions of law are reviewed de novo and are accorded no presumption of correctness. *Campbell v. Fla. Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996); *Presley v. Bennett*, 860 S.W.2d 857, 859 (Tenn. 1993). In this case, the facts are largely undisputed, and the issue presented involves determinations and conclusions of law.

Our analysis begins with the constitutional grant of power to the judicial branch of government, contained in Article VI, Section 1 of the Tennessee Constitution, which states:

The judicial power of this State shall be vested in one Supreme Court and in such Circuit, Chancery and other inferior Courts *as the Legislature shall from time to time, ordain and establish*; in the Judges thereof, and in Justices of the Peace. The Legislature may also vest such jurisdiction in Corporation Courts as may be deemed necessary. Courts to be holden by Justices of the Peace may also be established.

(Emphasis added). This section, along with Article II, Section 1 and Article VI, Section 4, "clearly guarantees the independence of the judiciary." *Town of South Carthage v. Barrett*, 840 S.W.2d 895, 897 (Tenn. 1992). The plain language of Article VI, Section 1 indicates that it is the Legislature that must vest judicial power in the courts by "ordaining and establishing" them.

A close examination of the language of Jellico's city charter, Chapter 167 of the Private Acts of 2002 ("the Act"), reveals that the Act did not create, establish, or ordain the Jellico City Court, but rather purported to delegate the authority to do so to the City. Section 1.04(29) of the Act states that "the city shall have the power to . . . [e]stablish a city court and the office of city judge." Thus, the Act left it to the City to decide whether and when to create the city court. The question presented is whether the General Assembly may delegate its authority to create a court in this manner. Pursuant to the language contained in Article VI, Section 1 of the Tennessee Constitution and applicable precedent from the Supreme Court, we agree with the trial court in answering that question in the negative.

Although our review of case law reveals that our courts have not often addressed this question because in most reported instances, the General Assembly has used language directly establishing a lower court in its legislation, the Tennessee Supreme Court spoke on the issue of delegation of this authority in *State ex rel. Haywood v. Superintendent, Davidson County Workhouse*, 259 S.W.2d 159 (Tenn. 1953), *overruled on other grounds by Bankston v. State*, 908 S.W.2d 194 (Tenn. 1995). In *Haywood*, the Court addressed the validity of a provision of the Davidson County Charter, created by Chapter 246 of the Private Acts of 1947, that provided “[t]hat the Mayor and City Council shall by ordinance provide for a Juvenile and Domestic Relations Court.” *Haywood*, 259 S.W.2d at 160. The Court stated the following:

In the case at bar the statute herein assailed *does not create the office of Juvenile and Domestic Relations Court but delegates to the Mayor and City Council of Nashville the authority to do so.*

* * *

In the case before us the Juvenile and Domestic Relations Court is empowered to “exercise all of the powers and jurisdiction conferred upon Juvenile Courts by law.” The Act further provides, “He shall also have such other powers and duties as may be assigned from time to time by ordinance.” It thus appears that the court is not only one that is not erected by the Legislature with its jurisdiction fixed and determined, but *its existence results from the delegation of legislative authority to a municipality in plain violation of the Constitution of Tennessee.*

Id. at 161-62.

The *Haywood* Court reached the following conclusion, part of which was later overruled by the Court in *Bankston*:

Moreover it plainly appears from a casual reading of the Act that the Mayor and City Council have attempted to create a court with far greater power than those constitutionally created by the Legislature. Such a court under our Constitution can have no legal existence *and its judgments are void.*

* * *

This is not a collateral attack upon the statute, but is a direct attack and is the only remedy available to the relator from a judgment *that is wholly void*.

Haywood, 259 S.W.2d at 162 (emphasis added).

In the subsequent *Bankston* case, the Supreme Court disagreed with and overruled the italicized portions of *Haywood* cited above, namely the conclusion that the judgments of the lower court that had not been validly created were “wholly void.” The *Bankston* Court applied the “de facto judge” doctrine in ruling that the judgments of a judge not elected in accordance with the Tennessee Constitution were not void. *Bankston v. State*, 908 S.W.2d 194, 196-98 (Tenn. 1995). *Bankston* overruled *Haywood* in part by concluding, “because the *Haywood* court clearly contradicts *Beaver* [*v. Hall*, 217 S.W. 649 (Tenn. 1920)] in flatly stating that the state criminal judgment of a court not elected in accordance with the Tennessee Constitution is ‘wholly void,’ 195 Tenn. at 273, 259 S.W.2d at 162, *Haywood* is overruled to that extent.” *Bankston*, 908 S.W.2d at 198 (emphasis added). The *Bankston* Court did not overrule *Haywood*’s conclusion that a private act purporting to delegate the General Assembly’s power to create a court was a “delegation of legislative authority to a municipality in plain violation of the Constitution of Tennessee.” *Haywood*, 259 S.W.2d at 162.

Moreover, the Supreme Court has stated the following regarding a similar question on the delegation of the General Assembly’s constitutional authority regarding the judiciary:

Under Article 6, Section 7 of the Constitution of Tennessee the power to ascertain and fix the compensation of County Judges is vested in the Legislature, and cannot be delegated to County Courts or any other body. *Shelby County v. Six Judges*, 3 Shan. Cas. 508, 511, 516, 520; *Judges’ Salary Cases*, 110 Tenn. 370, 381, 382, 75 S.W. 1061.

* * *

The law ascertaining the amount of compensation must be enacted by the legislature, the only law-making power. This law-making power cannot be delegated to any other body. *Shelby County, supra*, at 511-12. The last sentence of T.C.A. § 37-1-210 which permits counties to provide additional compensation to general sessions judges who also exercise juvenile court jurisdiction is unconstitutional.

Franks v. State, 772 S.W.2d 428, 430 (Tenn. 1989) (citing *Chambers v. Marcum*, 255 S.W.2d 1, 5 (Tenn. 1953)).

In summary, Article VI, Section 1 establishes that the General Assembly is authorized to vest judicial power in the courts by “ordaining and establishing” them. This power involves fundamental principles of our system of governance, including the separation of powers doctrine. We affirm the ruling of the trial court that the General Assembly’s constitutional authority to vest judicial power in a lower court may not be delegated to a municipality, but must be exercised directly by its legislation. “Since the municipality obtains only the power the Legislature may delegate, it can exercise no power that the Legislature is unable to confer.” *Summers v. Thompson*, 764 S.W.2d 182, 192 (Tenn. 1988) (Drowota, J., concurring). Accordingly, the Jellico City Court was not validly created. Pursuant to the de facto judge doctrine as discussed by the Supreme Court in *Bankston*, cited above, and *Jordan v. Knox County*, 213 S.W.3d 751 (Tenn. 2007), the actions and judgments of the City Judge from the time of the attempted creation of the Jellico City Court until the date of release of this opinion are valid and enforceable because the City Judge was sitting as a de facto judge.

IV. Conclusion

The judgment of the trial court is affirmed. Costs on appeal are assessed to the Appellant, Don R. Moses.

SHARON G. LEE, SPECIAL JUDGE