

IN THE ALABAMA COURT OF THE JUDICIARY

IN THE MATTER OF:

NAKITA BLOCTON  
CIRCUIT JUDGE  
JEFFERSON COUNTY, AL

\*  
\*  
\* CASE NO. 60  
\*  
\*

**FILED**

AUG 31 2021

COURT OF THE JUDICIARY  
Rebecca C. Oates  
Secretary

ORDER

Judge Blocton filed a “Motion to Dismiss, or in the Alternative, Motion to Strike Complaint and Count VI, or in the Alternative, Motion for More Definite Statement” (herein referred to as “Motion to Dismiss”). Attached as an exhibit to this motion was the “Affidavit of Clyde A. Wolfe.” Wolfe, a polygraph examiner, outlined numerous questions that he asked Judge Blocton during an interview, and he gave an opinion regarding the truthfulness of Judge Blocton’s answers. The Judicial Inquiry Commission (“JIC”) filed two responses to said motion, and the matter was set for a hearing on August 19, 2021. Both parties then submitted additional evidence, including several depositions of witnesses and printouts of numerous electronic communications associated with the acts allegedly committed by Judge Blocton as outlined in the complaint.

Although Judge Blocton filed the motion as a Motion to Dismiss pursuant to “Rule 3 of the Rules of Procedure of the Alabama Court of the Judiciary and Alabama Rule of Civil Procedure 12(b)(6),”

“ “[w]hen matters outside the pleadings are considered on a motion to dismiss, the motion is converted into a motion for summary judgment, Rule 12(b), Ala. R. Civ. P.; this is the case regardless of what the motion has been called or how it was treated by the trial court, Papastefan v. B & L Constr. Co., 356 So. 2d 158 (Ala. 1978); Thorne v. Odom, 349 So. 2d

1126 (Ala. 1977). ‘Once matters outside the pleadings are considered, the requirements of Rule 56, [Ala. R. Civ. P.], become operable and the “moving party’s burden changes and he is obligated to demonstrate that there exists no genuine issue as to any material fact and that he is entitled to a judgment as a matter of law.” C. Wright & A. Miller, Federal Practice & Procedure, Civil, 1366 at 681 (1969).’ Boles v. Blackstock, 484 So. 2d 1077, 1079 (Ala. 1986).” ’”

Lifestar Response of Alabama, Inc. v. Admiral Ins. Co., 17 So. 3d 200, 212 (Ala. 2009) (internal citations omitted).

If the movant makes a prima facie showing “ ‘that there is no genuine issue as to any material fact and that [it] is entitled to a judgment as a matter of law .... the burden then shifts to the nonmovant to rebut the movant’s prima facie showing by “substantial evidence.” ’ Lee [v. City of Gardendale], 592 So. 2d [1036,] 1038 [(Ala. 1992)].” Pittman v. Hangout in Gulf Shores, LLC, 293 So. 3d 937, 941-42 (Ala. 2019). “Furthermore, when considering a motion for a summary judgment, ‘the court must view the evidence in the light most favorable to the nonmoving party and must resolve all reasonable doubts against the moving party.’ Waits v. Crown Dodge Chrysler Plymouth, Inc., 770 So. 2d 618, 618 (Ala. Civ. App. 1999).” Pittman, 293 So. 3d at 942. “A ‘dismissal is proper only when it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief.’ Nance [v. Matthews], 622 So. 2d [297,] 299 [(Ala. 1993)].” Borden v. Malone, [Ms. 1190327, Nov. 25, 2020] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. 2020).

At the hearing on Judge Blocton’s Motion to Dismiss, her counsel argued that three specific allegations in the complaint should be dismissed: (1) that Judge Blocton used Facebook aliases to communicate improperly with litigants in her courtroom, (2) that Judge Blocton is mentally unfit to serve as a judge and that she used improper medications and drugs while performing her duties as a circuit court

judge, and (3) that Judge Blocton improperly assisted her cousin “D” regarding a home mortgage. Judge Blocton agrees that the other allegations in the complaint are subject to a factual dispute and are not “ripe” for dismissal at this time. Therefore, this order will address the three specific arguments made by Judge Blocton at the hearing.

First, Judge Blocton argues that the JIC has not provided any documentation or proof of her improper use of Facebook and social media. Judge Blocton asserts that witnesses have testified that the improper communications were done on an “office computer” and that a thorough investigation has established that no such communications from Judge Blocton or from any of the aliases she allegedly used were found on Judge Blocton’s computer. Furthermore, one of the screenshots sent to a witness was apparently sent from the computer in another judge’s office, and Judge Blocton asserts that it would have been impossible for her to send that email because she could not have gained access to a computer in another judge’s chambers. Thus, she concludes that the allegation regarding her use of Facebook aliases should be dismissed.

The JIC responds by submitting that a witness, L.J., has testified that Judge Blocton did use different Facebook aliases and that Judge Blocton also admitted to using an alias on social media. After the allegation regarding the improper use of social media was discovered, an investigator viewed the social media accounts allegedly used by Judge Blocton and interviewed Judge Blocton regarding a complaint that she had used social media to threaten an individual. During the interview with Judge Blocton, the investigator mentioned two false names allegedly used by Judge Blocton on social media. At least one of the social media pages mentioned by the investigator was deleted within an hour of the investigator’s conversation with Judge Blocton.

Based on the evidence submitted to the undersigned, and the argument of counsel, “substantial evidence” has been presented to support this allegation in the complaint. The allegations are sufficiently clear and supported by enough evidence to allow the trier of fact to

determine whether the JIC can prove its allegation that Judge Blocton violated the Judicial Cannons by improperly using Facebook and/or social media.

The second argument presented by Judge Blocton is that there is no support for the allegation in the complaint that she improperly used drugs and that she is not competent to serve as a Circuit Court Judge. In support of this aspect of her motion to dismiss, Judge Blocton cites a lack of medical records to support the JIC's allegations. She also cites a Journey Pure report prepared on behalf of Judge Blocton. This report includes the results of numerous tests and the opinion of several individuals, classified by Judge Blocton as experts, all indicating that Judge Blocton is competent to serve as a circuit court judge.

In response to this argument, the JIC references several shortcomings in the Journey Pure report, some of which Judge Blocton acknowledges, and points out that there is conflicting evidence of Judge Blocton's competence to serve as a Circuit Court Judge. The JIC emphasizes the testimony of witnesses establishing Judge Blocton's use of prescription drugs and her requirement that an employee (or employees) use the drugs against their will. The JIC asserts that evidence of Judge Blocton's strange behavior and her drug use establish Judge Blocton's mental instability and her inability to serve as a Circuit Court Judge.

This court cannot say that "no genuine issue as to any material fact" has been presented regarding this allegation. The JIC has presented evidence of erratic behavior and drug use that could adversely affect Judge Blocton's ability to serve as a Circuit Court Judge. Although it appears that Judge Blocton is prepared to present evidence that will sharply contradict the allegations in the complaint, a question of fact has been presented that needs to be decided by the trier of fact. Therefore, a pretrial dismissal of Count VI is not warranted.

The final argument for dismissal made by Judge Blocton at the hearing on her Motion to Dismiss is in reference to her alleged use of an alias to assist a relative in obtaining a mortgage. The complaint alleges that “Judge Blocton drafted an email or letter from ‘Linda Schneider’ to a financial institution at the behest of her cousin, ‘D,’ who was trying to get a mortgage.” Judge Blocton argues that the JIC does not know who the cousin is, and that there is no evidence that Bobby Davis, the only witness that Judge Blocton indicates could have knowledge of who “D” could be, does not know anything about the cousin or the allegation.

Again, the JIC argues that testimony by L.J. that Judge Blocton brought her the letter purporting to be from “Linda Schneider,” asked her to proof the letter, and disregarded L.J.’s questions about the propriety of such a letter, all present “substantial evidence” of the claim that Judge Blocton sent a falsified letter to assist a relative on a mortgage application.

The undersigned agrees that the JIC’s inability to determine the alleged identity of “D” does not preclude them from going forward with this claim. The aforementioned testimony of L.J. supports the allegation outlined in paragraph 50 of the complaint, and a question that must be determined by the trier of fact has been presented. Therefore, this allegation should not be dismissed at this stage in the proceedings.

It should be noted that all three issues addressed above have been decided by viewing the evidence, as is required, in a light most favorable to the complainant. During the trial of these allegations, the trier of fact will obviously be required to view the evidence in a different light.

The JIC also filed a supplemental response to Judge Blocton’s Motion to Dismiss which needs to be addressed in this order. This supplemental response included a motion to strike the polygraph examination that was submitted with the Motion to Dismiss because “long-standing law clearly holds that polygraph examinations are inadmissible evidence. See Smith v. State, 157 So. 3d 1007, 1015

(quoting A.G. v. State, 989 So. 2d 1167, 1177 (Ala. Crim. App. 2007)).” (JIC’s Supplement Response, p. 7.) Judge Blocton, at the hearing on her motion to dismiss, agreed to withdraw the exhibit which included the results from the polygraph examination. Therefore, JIC’s motion to strike is moot, and the polygraph examination results will not be admitted or considered during the trial of this matter.

Judge Blocton’s Motion to Dismiss also included a motion for a more definite statement. She alleged that the complaint was not specific and that it mentions “lawyers and litigants” without specifically identifying the individuals in question. In its written response, and at the hearing on Judge Blocton’s Motion to Dismiss, the JIC has agreed to provide the names of the witnesses and attorneys mentioned in the complaint who are known to the complainant. Otherwise, it appears to the court that the complaint is sufficiently specific and the request for a more definite statement is denied.

To the extent that Judge Blocton argues in her written motion to dismiss that the complaint is prejudicial and should be dismissed because it contains hearsay, this argument is either withdrawn because the argument was not addressed at the hearing, or it is without merit. The JIC is correct in asserting that the Alabama Rules of Civil Procedure do not preclude a complainant from including hearsay as part of the allegations in a complaint. Thus, the complaint in this case is not subject to dismissal due to the inclusion of hearsay as part of the allegations.

Based on the foregoing, Judge Blocton’s Motion to Dismiss is denied.

Rule 5, Rules of Procedure for the Court of the Judiciary, allows any judge to file a responsive pleading to a formal complaint within 30 days of being served with the complaint. Judge Blocton was served with the complaint in this matter more than 30 days ago, but, for good cause shown, she was granted an extension in filing an answer until the disposition of her Motion to Dismiss. Any responsive pleading filed by

Judge Blocton pursuant to Rule 5 shall be filed on or before September 8, 2021.

ORDERED this the 31st day of August, 2021.



---

J. William Cole  
Chief Judge  
Alabama Court of the Judiciary