

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

PAUL MOORE,)	
Petitioner,)	
)	
v.)	
)	
TONY PALAZZO,)	
Defendant-in-Certiorari/)	CIVIL ACTION FILE
Opposite Party,)	
)	NO. 2022CV372935
and)	
)	
CITY OF MILTON ETHICS PANEL,)	
Respondent-in-Certiorari,)	
)	
and)	
)	
MILTON CITY COUNCIL,)	
Respondent-in-Certiorari.)	

**DEFENDANT IN CERTIORARI TONY PALAZZO’S MOTION FOR
LITIGATION COSTS AND ATTORNEY’S FEES**

Pursuant to the Order entered by this Court on May 18, 2023, Tony Palazzo, the Defendant-in-Certiorari/Opposite Party in this appeal (“Palazzo”) files this Motion for Litigation Costs and Attorney’s Fees (“Motion”) against Petitioner Milton City Councilman Paul Moore (“Moore”).

INTRODUCTION

The City of Milton’s (“Milton’s”) Ethics Panel decided that Moore violated three ordinances that address prohibited conflicts of interest. Despite this, the City Council chose to close the matter against Moore without any further action. Despite this inaction, Moore filed a petition for certiorari appealing the Ethics Panel’s decision. He used the appeal to launch personal attacks against Palazzo, a constituent and resident of Moore’s own neighborhood. Consequently, Palazzo was forced to expend his own funds to defend

his name, the Ethics Panel's decision, and Moore's attempt to obtain his own attorneys' fees from Palazzo.

This Court decided that Moore's petition was untimely and, in the alternative, improper because Milton's procedure for ethics complaints is not quasi-judicial. See Order Granting Opposite Party Tony Palazzo's Motion to Dismiss Petition for Certiorari of Petitioner Paul Moore (the "Order"). The Order also authorized Palazzo to submit a motion seeking legal fees and costs, which this Motion does.

As grounds for the Motion, Palazzo shows that in the proceedings before this Court Moore asserted legal positions that demonstrated an "absence of any justiciable issue of law" and lacked "substantial justification" as to both the appropriateness of a petition for certiorari and the timeliness of Moore's appeal. O.C.G.A. §§ 9-15-14, 5-14-18. Further, the personal attacks that Moore's pleadings launched against Palazzo establish that the petition and subsequent briefs were filed for the purpose of harassment. O.C.G.A. § 9-15-14(b). Finally, as a successful opposing party, Palazzo is entitled to his costs pursuant to O.C.G.A. § 5-14-17.

ARGUMENT AND CITATION OF AUTHORITY

1. Standard of Review.

Two statutes authorize this Court to award Palazzo's attorneys' fees and costs in this matter. First, Code Section 9-15-14 authorizes awards of attorneys' fees, including in cases where the superior court sits in an appellate capacity. See Osofsky v. Bd. of Mayor & Comm'r, 237 Ga. App. 404, 405 (1999). As discussed more fully below, Code Section 9-15-14(a) requires an award of attorneys' fees if it applies, and Code Section 9-15-14(b) empowers this Court with the discretion to award attorneys' fees in other circumstances.

Code Section 5-14-18 entitles a prevailing defendant in certiorari cases to an award of their costs.

2. Palazzo Is Entitled to An Award of Attorney’s Fees Pursuant to O.C.G.A. § 9-15-14.

The General Assembly enacted O.C.G.A. § 9-15-14 to achieve two policy goals: “recompensing litigants [and] to punish and deter litigation abuses.” Long v. City of Helen, 301 Ga. 120, 121 (2017). To these ends, the statute contains two grounds for attorneys’ fees: one mandatory and another discretionary. The former considers whether a litigant’s position evidenced a “complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept [it].” O.C.G.A. § 9-15-14(a). If it did, courts “shall” award attorneys’ fees to the prevailing party. Id. The latter provision authorizes, but does not require, an award of attorneys’ fees if the losing party (1) advanced a position that “lacked substantial justification;” (2) commenced or litigated the action for the purpose of “delay or harassment;” or (3) “unnecessarily expanded the proceeding by other improper conduct.” O.C.G.A. § 9-15-14(b). Under these circumstances, courts are empowered with discretion to decide whether to impose an award of attorneys’ fees. Good faith is not a defense to claims under Code Section 9-15-14. See Moore v. Harris, 201 Ga. App. 248, 249 (1991). And, a party seeking fees is not required to show the other acted in bad faith. Lamar Co. v. State of Georgia, 256 Ga. App. 524, 526 (2002) (applying O.C.G.A. §9-15-14(b)).

a. O.C.G.A. § 9-15-14(a).

In this case, the mandatory provision of subsection (a) applies, and it warrants ordering Moore to pay Palazzo’s reasonable attorneys’ fees. Specifically, Moore acknowledged that petitions for certiorari are available only when they appeal a quasi-

judicial proceeding, and as support for that rule, Moore's response to Palazzo's motion to dismiss cited the Supreme Court of Georgia's decision in Housing Authority of the City of Augusta v. Gould, 305 Ga. 545 (2019). Thus, Moore knew that quasi-judicial proceedings must have finality. See Order at 7-9 (citing Housing Auth. of the City of Augusta v. Gould, 305 Ga. 545 (2019)). And, having read Gould, Moore must have known that an administrative process that does not impose a deadline for the issuance of a final decision is not quasi-judicial. Gould, 305 Ga. at 556-57.

Yet, and despite having filed two sur-reply briefs, Moore never addressed this dispositive aspect of quasi-judicial proceedings. See Order at 7 n.10. At oral argument, Moore raised new arguments, but he did not (and could not) argue that Milton's Ordinances imposed any kind of deadline on the City Council to act in response to a decision of the Ethics Panel. See Milton, Ga., Code § 2-892(c). Under these circumstances, the petition demonstrated a "complete absence" of law and fact to show that the proceeding below was quasi-judicial. O.C.G.A. § 9-15-14(a).

b. O.C.G.A. § 9-15-14(b).

Code Section 9-15-14(b) provides another basis to award Palazzo his attorneys' fees. When considering this statute, Georgia courts have held that the seminal question element is whether a "bona fide controversy" existed at the time of filing. See Brannon Enterprises, Inc. v. Deaton, 159 Ga. App. 685 (1981). Here, Moore's filing and prosecution of this appeal lacked substantial justification and was interposed for delay.

First, Moore's petition "lacked substantial justification." O.C.G.A. § 9-15-14(b). As discussed above, the Gould decision should have led Moore to seek a different path to

judicial review.¹ Additionally, the petition was untimely. Moore filed it over 30 days after the Ethics Panel's decision, which issued the only decision he challenged. (Order at 4-6.) This matters, as the Court of Appeals reversed a trial court's decision not to impose attorneys' fees against a party who filed an untimely malpractice claim. See, e.g., Brown v. Kinser, 218 Ga. App. 385, 387-89 (1995) (trial court abused its discretion denying motion for attorney's fees following grant of summary judgment for law firm in legal malpractice action where no evidence gave rise to factual merit in client's claim that statute of limitations had been tolled due to fraud so that action was not barred by statute of limitations).

Second, Moore's petition was filed for the purpose of harassing Palazzo. O.C.G.A. § 9-15-14(b) (authorizing attorneys' fees when a litigant has "interposed [litigation] for ... harassment"). Moore took Palazzo's challenge personally, which is made plain by the language in Moore's briefs. For example, he stated that "Mr. Palazzo clearly used the City's complaint process in order to intimidate, harass and silence Councilman Moore simply because Councilman Moore did not immediately agree with Mr. Palazzo's proposed solution to a public policy problem." (Pet'r's Writ at p. 27.) In fact, Moore sought attorney's fees from Palazzo stating in pertinent part that because "the filing of the Complaint was also clearly a misuse of the Ethics Code, the Court should also award attorney's fees to Councilman Moore as contemplated by the ordinance." (Id. at 28.)

Further demonstrating Moore's attempt to use the judicial system to bolster his political career at the expense of his constituents, Moore went so far as to assert that

¹ The Georgia Supreme Court has observed that "as a practical matter, it is difficult to distinguish between these two standards [in Code Sections 9-15-14(a) (complete absence of law) and 9-15-14(b) (lacking substantial justification) when] awarding attorney's fees." Fulton Cty. Bd. of Tax Assessors v. Boyajian, 271 Ga. 881, 882 (2000).

“the findings that [he] violated the City’s Code of Ethics and had been ‘sufficiently sanctioned’ for those violations have caused [him] financial loss, damage to [his] reputation in the community, and damage to [his] personal professional career.” Moore Aff. at ¶ 3. In addition, further harassing Palazzo, he accused him of having started the ethics complaint process that resulted in “[his] past and future principal opponent for [his] seat on the City Council [being] in attendance for the sole purpose of gathering information to use against him in future elections.” Id.²

In other words, Moore’s arguments appear more for the purpose of discrediting Palazzo than addressing his own conduct or that of the Ethics Panel that concluded he violated Milton’s Ethics Code.³

Finally, if the Court decides to award Palazzo his attorneys’ fees, the undersigned counsel is prepared to testify and provide an affidavit explaining the amount and reasonableness of the fees. See Ellis v. Stanford, 256 Ga. App. 294 (2002).⁴

3. Palazzo Is Entitled To Costs Pursuant To O.C.G.A. § 5-4-17.

Code Section 5-4-17 is specific to appeals to the superior courts by certiorari. It authorizes successful defendants to receive an order “against the plaintiff and his security for the sum recovered by him, together with the costs in the superior court.” O.C.G.A. § 5-4-7. The statute does not require any particular showing beyond prevailing in the

² On a statement released WSB-TV on March 8, 2023 Moore indicated that “the only reason [this appeal] happened is because [he] refuse[s] to lay down, and [he] continues to defend [himself] against the charges”.

³ Moore’s attacks also support the imposition of fees pursuant to O.C.G.A. § 5-4-18, which provides that a frivolous appeal or one that “was applied for without good cause or only for the purpose of delay ... [authorizes an] order that damages totaling not more than 20 percent of the sum adjudged to be due be recovered by the defendant in certiorari against the plaintiff in certiorari and his security; and judgment may be entered and execution issued accordingly.”

⁴ Undersigned counsel will establish the total cost of fees in this affidavit.

proceeding. Such is the case here, and Palazzo's costs are: \$1,403.65. This represents one-half of the cost of the court-reporter.

CONCLUSION

For the reasons set out herein, the Court should award Palazzo's reasonable attorneys' fees and costs. The petition was wrongly and untimely filed, and it ignored on-point and binding precedent. For these reasons, Palazzo is entitled to fees pursuant to O.C.G.A. § 9-15-14 and costs based on O.C.G.A. § 5-4-17.

Respectfully submitted this 16th day of June, 2023.

/s/ Josh Belinfante
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing **DEFENDANT IN CERTIORARI TONY PALAZZO'S MOTION FOR LITIGATION COSTS AND ATTORNEY'S FEES** on all parties who have entered an appearance in this case by electronically filing it with the Clerk of the Court using the Odyssey eFileGA system, which will automatically send an email notification of such filing to counsel for such parties. Additionally, a true and correct copy of the same has been delivered to the following counsel of record via U.S. Mail, postage prepaid and addressed as follows:

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This 16th day of June, 2023.

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