

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

GERALD LYNN BOSTOCK,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION
)	NO: 1:16-cv-01460-ELR-WEJ
CLAYTON COUNTY,)	
)	
Defendant.)	

**DEFENDANT’S OPPOSITION TO PLAINTIFF’S MOTION
FOR LEAVE TO FILE THIRD AMENDED COMPLAINT**

COMES NOW Defendant Clayton County (the “County”) and files its Opposition to Plaintiff’s Motion for Leave to File Third Amended Complaint (“Motion to Amend”) (Doc. 51). For the reasons expressed below, the County respectfully submits that Plaintiff’s Motion to Amend should be denied because the only new claim raised in the Proposed Third Amended Complaint would be subject to dismissal, and therefore permitting amendment would be futile.

I. STATEMENT OF THE CASE

This case is over four years old and concerns a termination of employment that dates back to 2013. The discovery period opened on November 20, 2020. In the intervening period, the issue of Mr. Bostock’s pleadings and whether they state a viable claim for relief has gone to the Supreme Court and back, during which time Mr.

Bostock became the subject of numerous news articles and television appearances across the country and used his public presence to accuse Chief Judge Steve Teske of the Juvenile Court of Clayton County of having a discriminatory animus against gay and lesbian individuals. Judge Teske has no such animus and, when approached by reporters, understandably felt compelled to defend his character against Mr. Bostock's very public accusations of "homophobia."

Now Mr. Bostock seeks to add a new Title VII claim for retaliation based on Judge Teske's public denial of discrimination. Mr. Bostock is asking this Court to hold that an employee is free to make allegations of discrimination in the media, but, when an employer is defending an employment discrimination lawsuit, federal law prohibits a non-defendant and individual from publicly denying he acted in a discriminatory manner or stating he had legitimate, nondiscriminatory reasons for the challenged employment action. The undersigned is unaware of any case authority that comes close to such an expansive interpretation of Title VII. Just as Mr. Bostock is entitled to hold a press conference on the steps of the Supreme Court to declare to all the world that "homophobia" was the reason for his termination, Judge Teske has the right to defend his own character when news reporters inevitably ask for his side of the story. Nothing in Title VII suggests that only the plaintiff may speak to the press.

The Proposed Third Amended Complaint contains *no facts* to suggest a

plausible retaliatory motive by Clayton County. He bases his retaliation claim entirely on out-of-context quotations and partial sentences from one Fulton County Daily Report article and one Atlanta Journal-Constitution opinion column, in which either he or his attorney or both also provided comment. While Mr. Bostock did not attach the referenced news article or opinion column to his Proposed Third Amended Complaint, the full context of the article and column contains statements by Judge Teske that expressly disclaim any retaliatory motive. Mr. Bostock alleges no facts to rebut Judge Teske's stated reasons for speaking to the press. Mr. Bostock instead comes armed with nothing but speculation as to Judge Teske's intentions, which is patently insufficient to state a claim for retaliation. Mr. Bostock's Motion to Amend thus should be denied, and this case should proceed into discovery on the allegations and claim set forth in the Second Amended Complaint.

II. LEGAL STANDARD

Rule 15(a)(2) of the Federal Rules of Civil Procedure provides that, once a plaintiff no longer has an opportunity to amend his complaint as a matter of course, any amendment requires either the opposing party's written consent or leave of court. While, generally, leave is given "when justice so requires," Fed. R. Civ. P. 15 (a)(2), courts properly deny leave to amend for the "futility of amendment." *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Equity Lifestyle Props., Inv. v. Florida Mowing & Landscape*

Serv., 556 F.3d 1232, 1241 (11th Cir. 2009).

“[D]enial of leave to amend is justified by futility when the ‘complaint as amended is still subject to dismissal.’” *Burger King Corp. v. Weaver*, 169 F.3d 1310, 1320 (11th Cir. 1999) (quoting *Halliburton & Assocs., Inc. v. Henderson, Few & Co.*, 774 F.2d 441, 444 (11th Cir. 1985)). Thus, a court may deny leave to amend a complaint if it concludes that the proposed amendment would not survive a motion to dismiss. *Christman v. Walsh*, 416 F. App’x 841, 844 (11th Cir. 2011).

III. ARGUMENT AND CITATION TO AUTHORITY

Plaintiff’s Motion to Amend should be denied because the retaliation claim he seeks to add as Count II—the only new claim raised in the Proposed Third Amended Complaint—would be subject to dismissal on the face of the pleadings. Therefore, Plaintiff’s Motion to Amend should be denied as futile.

A. Mr. Bostock’s Allegations Regarding Retaliation

In his Proposed Third Amended Complaint, Mr. Bostock alleges he engaged in protected activity when he filed his EEOC charge in 2013 and again when he initiated this lawsuit in 2016. (Doc. 51-1 ¶¶ 7, 25-26.) He alleges that, on June 17, 2020, after the Supreme Court issued its opinion reversing the dismissal of this action and remanding for further proceedings, an article in the Fulton County Daily Report quoted Judge Teske as saying “I don’t appreciate him not telling the whole

truth, . . . he couldn't have gotten there if he had revealed the whole truth. Because he didn't reveal the whole truth, he got there.” (*Id.* ¶ 29.) He alleges the same article also reported that Judge Teske said Mr. Bostock's termination “was about mismanagement of court fees. Some of those funds intended to recruit CASA volunteers improperly went to the softball team.” (*Id.* ¶ 30.) He alleges Judge Teske made “similar comments” in an Atlanta Journal-Constitution (“AJC”) article published on June 19, 2020.¹ (*Id.*)

¹ Mr. Bostock did not attach either document to his Proposed Third Amended Complaint, but true and correct copies are attached to this brief as Exhibits A and B and also are available online. See R. Robin McDonald, *Landmark SCOTUS Ruling Is Only the Beginning for Bostock's Discrimination Claims*, Fulton County Daily Report, June 17, 2020, available at <https://www.law.com/dailyreportonline/2020/06/17/landmark-scotus-ruling-is-only-the-beginning-for-bostocks-discrimination-claims/> (last visited Dec. 7, 2020); Bill Torpy, *The 'Villain' in Gay Workers Rights Case Has Plenty to Say*, Atlanta Journal-Constitution, June 19, 2020, available at <https://www.ajc.com/news/local/opinion-villain-clayton-gay-worker-rights-case-has-plenty-say/2IKxsOrNZ3W3S099cAxpG0/> (last visited Dec. 7, 2020). The AJC “article” he references actually is an opinion column and not a news article. Since the motion-to-dismiss standard applies to an opposition to a motion to amend on grounds of futility, *Burger King*, 169 F.3d at 1320, the Court may consider these articles in ruling on Mr. Bostock's Motion to Amend because they are referenced in the Proposed Third Amended Complaint; they are central to his claims; and their authenticity is not in dispute. *Brooks v. Blue Cross and Blue Shield of Fla., Inc.*, 116 F.3d 1364 (11th Cir. 1997). Furthermore, because the County is not submitting this news article and opinion column for the truth of any statement contained therein, but only to show the full context of the cherry-picked quotations Mr. Bostock provides, the Court may take judicial notice of these documents. *United States ex rel. Osheroff v. Humana, Inc.*, 776 F.3d 805, 811 n.4 (11th Cir. 2015) (citing *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1278 n.10 (11th Cir. 1999)).

Mr. Bostock asserts that these comments were “false, disparaging, and calculated to further injure Plaintiff’s reputation,” and “made in retaliation for Plaintiff’s engaging in protected activity.” (*Id.* ¶¶ 31-32.)

B. Mr. Bostock’s Proposed Retaliation Claim Fails As A Matter Of Law

Title VII’s anti-retaliation provision provides, in relevant part, that it is unlawful “to discriminate against any individual . . . because he has opposed any practice made an unlawful employment practice by [Title VII], or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [Title VII].” 42 U.S.C. § 2000e-3(a). The first clause (opposing a practice made unlawful) is known as the “opposition” clause, while the second clause (participating in any manner in an investigation, proceeding, or hearing) is known as the “participation” clause. *See Gogel v. Kia Motors Mfg. of Ga.*, 967 F.3d 1121, 1134 (11th Cir. 2020). Because Mr. Bostock identifies his protected activity as his filing the EEOC charge in 2013 and this lawsuit in 2016, he presumably intends to assert his proposed retaliation claim pursuant to the participation clause.

A plaintiff states a *prima facie* case of retaliation by alleging “(1) he participated in an activity protected by Title VII; (2) he suffered an adverse employment action; and (3) there is a causal connection between the participation in

the protected activity and the adverse action.” *Litman v. Dristy*, 703 F. App’x 766, 770 (11th Cir. 2017) (citing *Pipkins v. City of Temple Terrace*, 267 F.3d 1197, 1201 (11th Cir. 2001)); *see also Harper v. Blockbuster Entm’t Corp.*, 139 F.3d 1385, 1388 (11th Cir. 1998). Mr. Bostock alleges no facts to support either the second or third elements above.

1. Speaking Publicly About One’s Legal Defenses Is Not A Materially Adverse Action

To support an actionable claim of retaliation, the challenged action must be “materially adverse,” meaning “it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.” *Crawford v. Carroll*, 529 F.3d 961, 974 (11th Cir. 2008) (quoting *Burlington N. & Santa Fe Ry. v. White*, 548 U.S. 53, 68 (2006)).

The undersigned is aware of no controlling authority holding that an individual’s speaking to the press to deny allegations a plaintiff made about him in a lawsuit could constitute a retaliatory adverse action for purposes of Title VII. Mr. Bostock cites no authority for this proposition, controlling or otherwise, in his initial brief. (*See* Doc. 51-3 at pp. 1-4.) Nor does he allege facts to show that a reasonable employee would be dissuaded from making or supporting an EEOC charge or filing a lawsuit where a non-defendant and individual publicly denied the discrimination allegations to a news reporter. *See Valdez v. New Mexico*, 109 F.

App'x 257, 263 (10th Cir. 2004) (alleged defamatory statements to press failed to constitute adverse action for First Amendment retaliation claim where "Plaintiff remained free to express his version of events," including in his own "contacts with the press"). Significantly, the news article on which Mr. Bostock relies in this case contains comments by both Mr. Bostock and his counsel of record, and the AJC opinion column also contains statement by Mr. Bostock's counsel. (*See* Ex. A, Daily Report Article; Ex. B, AJC Column.)

When the quotations Mr. Bostock attributes to Judge Teske are read in their full context in the Daily Report article in which they appear, it is plain Judge Teske was defending himself and telling his side of the story rather than "injuring" Mr. Bostock. For example, in stating that Mr. Bostock did not tell "the whole truth," Judge Teske explained he had known Mr. Bostock was gay ten years before Mr. Bostock joined the gay softball league. "Teske said he and his wife were friends with Bostock and his partner, socialized with them and introduced them to Teske's children and his parents during the decade that Bostock worked at the juvenile court. Bostock's replacement was a lesbian, Teske said." (Ex. A, Daily Report Article.)

In the AJC column Mr. Bostock references, Judge Teske stated that he and his wife were close to and often socialized with Mr. Bostock and his partner during the ten years before his termination: "We went to gay venues in Midtown; we met a lot

of their gay friends,' Teske said. 'Gerald is a nice guy. My mom and dad loved him. That's how close we were. He knew my kids, my mom, my dad. We became very close. That's why it was very hard for me to let him go.'" (Ex. B, AJC Column.)

Judge Teske made these statements to journalists to show he has no discriminatory animus against individuals in same-sex relationships. "Teske said that, now, Bostock's narrative that he was targeted because he was gay has cast a public shadow on his own motives and beliefs, potentially jeopardizing his longtime advocacy for youth, including juveniles who are often mistreated because they are gay, lesbian or transgender." (Ex. A, Daily Report Article.)

The AJC column further quotes a non-County employee, Paul, who corroborated Judge Teske's statements that he was aware of Mr. Bostock's sexual orientation all along and did not just learn about it in connection with the softball team. The column states that Paul is an ex-partner of Mr. Bostock's and quotes him as saying "It was very weird for [Mr. Bostock] to say he was fired for being gay. Everyone (at his job) knew he was gay. He was very out,' Paul said." (Ex. B, AJC Column.)

Mr. Bostock alleges no facts to show any of these statements were "false," "disparaging," or "calculated to further injure Plaintiff's reputation." Judge Teske's statement that Mr. Bostock did not tell "the whole truth," when placed in context, is

an accurate statement as demonstrated above. Indeed, the fact that Mr. Bostock failed to attach the news article or column in question and left out Judge Teske's explanatory statements that Mr. Bostock's sexual orientation was well known to Judge Teske a decade before his termination is itself an example of Mr. Bostock not telling "the whole truth."

Judge Teske's comments about "mismanagement of court fees" and using funds intended for recruiting CASA volunteers to fund an out-of-county softball team contain no information that was not already in the public realm regarding this case. These statements refer to the County's internal audit, which Mr. Bostock himself has referenced in every complaint and amended complaint filed in this Court. (*See* Doc. 1 at p. 8; Doc. 4 ¶¶ 18-20; Doc. 10 ¶¶ 18-20; Doc. 51-1 ¶¶ 20-22.) Mr. Bostock's own public filings in this Court (in addition to his own media appearances) thus show it already was a matter of public knowledge that the County contends it terminated Mr. Bostock in connection with an internal audit regarding his handling of court funds. Judge Teske's statements in this regard added nothing that was not already part of the public record or unrelated to the County's defenses and contentions in this action. The County's Answer in this case, which also is a public document, contains the same information. (*See* Doc. 40 ¶¶ 18, 20.) If asserting legal defenses and denying a plaintiff's allegations in the context of a public lawsuit

are not adverse actions, *cf. Kentish v. Madahcom, Inc.*, 566 F. Supp. 2d 1343, 1349 (M.D. Fla. 2008) (holding defendant's assertion of counterclaim could not provide basis for retaliation claim), then providing the same information regarding legal defenses to a journalist who also spoke to and quoted both the plaintiff and his attorney would not "dissuade[] a reasonable worker from making or supporting a charge of discrimination." *Crawford*, 529 F.3d at 974.

2. Mr. Bostock Alleges No Facts To Establish A Causal Connection

A Title VII claim for retaliation further requires allegations of fact to show a causal connection between the protected activity and the challenged adverse action. *Litman*, 703 F. App'x at 770. "This means the plaintiff must establish that his protected activity was a but-for cause of the employer's alleged adverse action." *Palmer v. McDonald*, 624 F. App'x 699, 703 (11th Cir. 2015) (affirming dismissal of retaliation claim for failure to allege facts to show but-for causation (citing *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 361 (2013))).

Mr. Bostock's assertion that "Teske's comments were made in retaliation for Plaintiff's engaging in protected activity" is a legal conclusion unsupported by any allegations of fact. (*See* Doc. 51-1 ¶ 32.) Bare legal conclusions are patently insufficient to withstand a motion to dismiss. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *ADA v. Cigna Corp.*, 605 F.3d 1283, 1290 (11th Cir. 2010).

While temporal proximity sometimes can be sufficient to establish causation, the time span between the protected activity and the adverse action must be “very close,” *Clark Cnty. Sch. Dist. v. Breeden*, 532 U.S. 268, 273 (2001), meaning less than three months. *Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361, 1364 (11th Cir. 2007). “[I]n the absence of other evidence tending to show causation, if there is a substantial delay between the protected expression and the adverse action, the complaint of retaliation fails as a matter of law.” *Id.*

Mr. Bostock’s alleged protected activities here occurred in 2013 and 2016, but he alleges Judge Teske waited until mid-2020 to retaliate against him. (Doc. 51-1 ¶¶ 24-26, 29, 52.) A four-to-seven-year gap is far too long for a Court to infer plausible causation. *Thomas*, 506 F.3d at 1364. In fact, the Supreme Court has held a time span of 20 months—less than half the time at issue here—to be evidence of “no causality at all.” *Breeden*, 532 U.S. at 274; *see also Greene v. Ala. Dep’t of Revenue*, 746 F. App’x 929, 932 (11th Cir. 2018) (affirming grant of motion to dismiss and finding insufficient allegations of causal connection “given that nearly eight months elapsed between the filing of [plaintiff’s] last EEOC charge in October 2014 and the termination of his employment in June 2015”); *Bailey v. City of Huntsville*, 517 F. App’x 857, 861 (11th Cir. 2013) (three-month gap insufficient); *Garrett v. University of Ala. at Birmingham Bd. of Trustees*, 507 F.3d 1306, 1317

(11th Cir. 2007) (four-month gap insufficient); *Thomas*, 506 F.3d at 1364 (“That three (3) month period, without more, does not rise to the level of ‘very close.’”); *Smith v. Bell*, No. 06-60750-CIV, 2008 WL 868253, 2008 U.S. Dist. LEXIS 29014, at *4 (S.D. Fla. Mar. 31, 2008) (granting motion to dismiss where alleged adverse action occurred 18 months after protected activity). *Accord Ninying v. N.Y.C. Fire Dep’t*, 807 F. App’x 112, 115 (2d Cir. 2020) (affirming dismissal of retaliation claim for failure to allege causation where complaint contained conclusory assertion that 2015 termination was retaliation for 2012 EEOC charge); *Dhar v. City of N.Y.*, 655 F. App’x 864, 866 (2d Cir. 2016) (affirming dismissal of retaliation claim because two-year temporal gaps were “too great to raise a plausible inference of discrimination”); *Johnson v. Univ. of Wisconsin-Eau Claire*, 70 F.3d 469, 480 (7th Cir. 1995) (“The substantial time lapse between the events is counter-evidence of any causal connection.”).

Also, the very news article and opinion column on which Mr. Bostock bases his proposed retaliation claim contain several statements by Judge Teske that affirmatively disclaim any retaliatory motive. Judge Teske repeatedly made clear that he *agrees* with the Supreme Court’s decision:

- “The judge said that . . . he is ‘ecstatic’ about the Supreme Court ruling[.]” (Ex. A, Daily Report Article.)

- “Teske said he supported Bostock’s argument that Title VII should extend protections to the LGBTQ community.” (*Id.*)
- “‘I am proud of Gerald for taking this issue up to the Supreme Court,’ he said.” (*Id.*)
- “‘Look what he won. A landmark decision to protect those who are gay and lesbian and transgender. That’s the bigger picture here. I don’t want that to get lost.’” (*Id.*)
- “‘[The Supreme Court’s decision] was about whether or not gays should be protected in their place of employment, which I support.’” (*Id.*)
- “‘I’m glad the Supreme Court came down with that decision,’ Teske said. ‘As a lawyer and a judge, I believe that gays and lesbians should not be discriminated against.’” (Ex. B, AJC Column.)
- “‘I’m glad he (Bostock) won,’ Teske said.” (*Id.*)

In light of the above comments, no fair reading of the Daily Report article and AJC column could conclude that Judge Teske intended to harm Mr. Bostock because of this legal action, “get back at him” for the Supreme Court’s decision, or prevent him from obtaining future employment. Mr. Bostock alleges no facts to suggest Judge Teske does not mean what he says above. The assertion that Judge Teske was acting with retaliatory animus is grounded in baseless speculation.

Also, Judge Teske’s statements to the Daily Report and the AJC regarding the internal audit and “mismanagement of court fees” cannot have been causally connected to Mr. Bostock’s alleged protected activity because Judge Teske made

essentially these same comments to the news media *before* Mr. Bostock filed his EEOC charge. *See Drago v. Jenne*, 453 F.3d 1301, 1308 (11th Cir. 2006) (no causal connection to establish retaliation when employer contemplates adverse action before protected activity and continues with adverse action after protected activity). On June 4, 2013, shortly after Mr. Bostock's termination and months before the EEOC charge,² Judge Teske gave a televised interview to a reporter for WSB-TV 2 in Atlanta and made similar comments about Mr. Bostock's handling of CASA funds, including with regard to the softball team. *See* Richard Belcher, *Clayton Court Official Under Investigation Over Misused Money*, June 4, 2013, available at <https://www.wsbtv.com/news/local/clayton-court-official-under-investigation-over-mi/243075701/#:~:text=JONESBORO%2C%20Ga.,money%20intended%20for%20foster%20children> (last visited Dec. 7, 2020).³ Thus, because the statements attributed to Judge Teske in the Proposed Third Amended Complaint regarding “mismanagement of court fees” are largely identical to statements he made *before*

² The EEOC charge previously filed in this case shows Mr. Bostock signed and filed it with the EEOC on September 5, 2013. (Doc. 13-1.)

³ The Court may take judicial notice of Judge Teske's statements in this television interview, not for the truth of his statements, but for the mere fact of their publication. *See Osheroff*, 776 F.3d at 811 n.4. *Accord Benak ex rel. Alliance Premier Growth Fund v. Alliance Capital Mgmt. L.P.*, 435 F.3d 396, 401 n.15 (3d Cir. 2006) (court may take judicial notice of news reports to ascertain “what was in the public realm” at a given time).

Mr. Bostock filed his EEOC charge or this lawsuit, Mr. Bostock's engagement in protected activity could not have been the cause of Judge Teske's statements. *Drago*, 453 F.3d at 1308.

IV. CONCLUSION

For the foregoing reasons, Plaintiff's Motion to Amend (Doc. 51) should be denied. This case should proceed to discovery with the Second Amended Complaint (Doc. 10) as Plaintiff's operative pleading.

Respectfully submitted,

FREEMAN MATHIS & GARY, LLP

/s/ Jack R. Hancock

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), I hereby certify that the within and foregoing **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT** has been prepared in compliance with Local Rule 5.1(B) in 14-point Times New Roman type face.

This 7th day of December, 2020.

/s/ Jack R. Hancock

Jack R. Hancock

Georgia Bar No. 322450

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the within and foregoing **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following counsel of record:

Thomas J. Mew, IV
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This 7th day of December, 2020.

/s/ Jack R. Hancock _____

Jack R. Hancock
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EXHIBIT A

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Landmark SCOTUS Ruling Is Only the Beginning for Bostock's Discrimination Claims

"I think it's important to note that for Gerald, while this has been a very long journey, it is very much in the early days of his underlying case," said Thomas Mew of Buckley Beal.

By R. Robin McDonald | June 17, 2020



Thomas "Tom" Mew (from left), Gerald Bostock and Chief Judge Steven Teske.

For Atlanta resident Gerald Bostock, the U.S. Supreme Court's landmark ruling (<https://www.law.com/nationallawjournal/2020/06/15/no-contest-gorsuch-leads-scotus-ruling-that-protects-lgbt-employees-against-firing/>) Monday affirming (https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf) Title VII discrimination protection for the LGBTQ community is not the end of the legal fight over his 2013 firing.

Bostock's job discrimination suit (<https://www.law.com/dailyreportonline/2018/08/10/scotus-asked-to-ignore-circuit-split-on-sexual-orientation-discrimination/>) against the Clayton County Commission, which he first filed pro se in 2016, was never decided on the merits.

Instead, Senior District Judge Orinda Evans granted the Clayton County Commission's motion to dismiss the case in 2017, adopting arguments that Title VII of the Civil Rights Act of 1964 did not prohibit discrimination against members of the LGBTQ community, even though it outlaws discrimination on the basis of sex.

"I think it's important to note that, for Gerald, while this has been a very long journey, it is very much in the early days of his underlying case," Bostock counsel Thomas Mew of Atlanta's Buckley Beal said Tuesday. "There has been no substantive discovery. We are basically starting close to square one on the underlying case."

Bostock was the child welfare services coordinator assigned to Clayton County Juvenile Court when he was fired for "conduct unbecoming" an employee in 2013, several months after he began playing in a gay recreational softball league. His participation in the league and his sexual orientation soon generated criticism "by one or more persons with significant influence" on county decision-making at a county meeting Bostock attended, according to Evans' dismissal ruling.

Bostock contends that criticism was the impetus for an internal audit of the Court Appointed Special Advocate, or CASA, program that he managed. Bostock and his counsel maintain that he never mismanaged funds under his control and that the audit was a pretext for firing him.

"Seven years ago, I never realized I would lose my dream job, all because I made a decision to join a gay softball league," Bostock said. "It was an easy decision to move forward and to stand up, not only for myself. I realized very early on this was such a big, important issue that impacts so many people across the country that I had to do something."

"One of the main things I learned is patience," he said. "Because of my sense of who I am and what I seek, I will continue to fight. It's my top priority. I am excited about getting the opportunity to go back to court. My stamina is gonna stay strong. ... And I remain optimistic, as I have from day one."

Said Mew: "We are prepared to push forward with Gerald's claims and proceed to trial if necessary. ... Obviously, we have no shortage of very able folks who will be able to lend a hand."

Clayton County Commission Chairman Jeff Turner said the county is still considering its options on how to proceed. He confirmed that Clayton County Juvenile Court Chief Judge Steve Teske, who was Bostock's supervisor and authorized his firing, will have a significant say in determining what the county does next.

He also confirmed that the commission would consider recommendations by the county's outside counsel Jack Hancock, a partner at the Atlanta offices of Freeman Mathis & Gary. Hancock declined to comment.

Clayton County Staff Attorney Charles Reed Jr. could not be reached for comment.

On Tuesday, Teske said Bostock's firing was never about his sexual orientation and was about mismanagement of court fees. Some of those funds intended to recruit CASA volunteers improperly went to the softball team, Teske said.

"All that together created some very poor optics for the court," he said. "It showed poor judgment. It created a trust issue."

The judge said that while he is "ecstatic" about the Supreme Court ruling, "The issue before the Supreme Court had nothing to do with whether or not he [Bostock] was, in fact, terminated because he was gay."

Teske said he supported Bostock's argument that Title VII should extend protections to the LGBTQ community. But he rejected Bostock's claim that his sexual orientation prompted the audit that led to his termination. Teske said he and his wife were friends with Bostock and his partner, socialized with them and introduced them to Teske's children and his parents during the decade that Bostock worked at the juvenile court. Bostock's replacement was a lesbian, Teske said.

Teske said he chose not to counter Bostock's narrative while the case was making its way to the Supreme Court.

But Teske said that, now, Bostock's narrative that he was targeted because he was gay has cast a public shadow on his own motives and beliefs, potentially jeopardizing his longtime advocacy for youth, including juveniles who are often mistreated because they are gay, lesbian or transgender.

"I am proud of Gerald for taking this issue up to the Supreme Court," he said. "Notwithstanding the fact that I don't appreciate him not telling the whole truth, ... he couldn't have gotten there if he had revealed the whole truth. Because he didn't reveal the whole truth, he got there. Look what he won. A landmark decision to protect those who are gay and lesbian and transgender. That's the bigger picture here. I don't want that to get lost."

“Up until this point, I let Gerald control the narrative,” Teske said. “There wasn’t a need for me to interject the rest of the story because the issue was not about me at the time. It was about whether or not gays should be protected in their place of employment, which I support.”

But now, he said, “The landscape has changed. ... Now it’s about the facts. I can’t let him control that.”

EXHIBIT B



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OPINION: The 'villain' in gay workers rights case has plenty to say

ONLY ON AJC: TORPY AT LARGE | June 19, 2020

By Bill Torpy, The Atlanta Journal-Constitution

**He applauds U.S. Supreme Court LGBTQ ruling, but calls lead plaintiff
Gerald Bostock untruthful**

Advertisement

Sometimes bad court cases end up making good law. That's exactly what happened in the landmark U.S. Supreme Court ruling that prohibits discriminating against LGBTQ employees, says

Advertisement

He's also the "villain" in this proceeding.

In 2013, Teske fired Gerald Bostock, the lead plaintiff in the case that swayed two conservative justices to join the [Supreme Court's liberal wing in a 6-3 decision](#). Bostock, who was the coordinator of Clayton's CASA (court appointed special advocates) program, had sued in 2016, alleging he was fired because he was gay. But his lawsuit was dismissed without being heard.

Bostock contends it all went south after he joined the Honey Badgers of the gay Hotlanta Softball League and started getting disparaging comments at work about his sexual orientation. Then there was an audit of court funds and allegations that he misspent court money. Soon, after a decade of glowing job reviews, Bostock was an ex-employee.

In his majority opinion, Justice Neil Gorsuch, an appointee of President Donald Trump, wrote that protection of LGBTQ employees falls under the Civil Rights Act of 1964.

"We do not hesitate to recognize today a necessary consequence of that legislative choice: An employer who fires an individual merely for being gay or transgender defies the law," Gorsuch said.

In a press conference after Monday's surprise ruling, Bostock said: "I'm just thrilled and I'm proud that I've been part of this journey and have been able to contribute to this historic moment today."

Last year, he summed it up even better: "My message to Clayton County is: Homophobia is unacceptable. We're in 2019 and discrimination like that in the workplace is wrong."

Advertisement

Worth Reading

“What’s really going on?
I’m all over it.”

AJC columnist Bill Torpy





As a guy who sweeps up after the news, I thought it might make for a good backstory to find out what knuckle-dragging troglodyte separated a good, caring man from his dream job just for being gay. I did some investigating and found out it was Teske.

That seemed odd. I've spoken with the judge several times and he is well known as a thoughtful leader in trying to turn around the lives of troubled youths, most of whom are African American.

I dialed and it was like Teske was waiting for my call.

"I'm glad the Supreme Court came down with that decision," Teske said. "As a lawyer and a judge, I believe that gays and lesbians should not be discriminated against."

"I avoided this going public before it went to the Supreme Court. I'm glad he (Bostock) won," Teske said. "But there's only so long he can hide from the truth."

There was no sexual orientation surprise; the softball team didn't sway anything, Teske said. "We knew from the start of his employment that he was gay."

Like 10 years earlier.



In fact, the judge said that he, his then-wife, Bostock, and Bostock's partner at that time often socialized together.

"We went to gay venues in Midtown; we met a lot of their gay friends," Teske said. "Gerald is a nice guy. My mom and dad loved him. That's how close we were. He knew my kids, my mom, my dad. We became very close. That's why it was very hard for me to let him go."

Bostock's job was to recruit and train volunteers who would be assigned to help monitor foster kids and then pass their findings to the court.

Bostock could be brusque, Teske said, which led to his employees "rebell[ing]" against him early in his tenure. In fact, the judge worried the co-workers might be grumbling because Bostock was gay.

“We looked into it and my reaction was to bring in the employees and tell them that we support Gerald,” Teske told me. “If we wanted to get rid of him, we could have done it then.”





Bostock has contended the audit that came in 2013 was a pretext to fire him. The audit found there were virtually no controls over spending, and that “could result in loss of credibility to a program that has an outstanding reputation across Clayton County and the state.”

The audit found that almost all of the \$12,294 spent the previous 28 months was on meals and entertainment, except for about \$1,000 sponsoring the Atlanta softball team. It also found that Bostock spent hundreds of dollars without receipts and had a reception in Birmingham, Alabama, with his softball team.



Bostock has said the meals were for recruitment, including dinners in Midtown restaurants. He has said his Clayton employers frowned upon the fact that some of the restaurants catered to gay people.

“The problem the auditors had was the location,” Teske said. “You’re not going to get people from Atlanta to volunteer to come to Clayton County for court.”

I spoke with Bostock’s ex-partner, Paul, who asked that his last name not be used so he wouldn’t be seen as a traitor to the cause. “It was very weird for him to say he was getting fired for being gay. Everyone (at his job) knew he was gay. He was very out,” Paul said.

“I met Judge Teske several times as his partner,” said Paul. “I felt bad for Judge Teske because he was thrown under the bus. It felt like a slap in the face to (Teske) and his co-workers that they were called homophobic and mean-spirited.”

I called Bostock and left a message asking for an interview. A PR lady called back and said she’d set one up. When I told her what I wanted to talk about, she said I better talk with his lawyer.

The Supreme Court ruling has established a new precedent concerning gay people in the workplace. But Bostock’s original case against Clayton County has never been heard, having been thrown out of court earlier.





Attorney Thomas Mew said he didn't want to speak about the facts of the case against Clayton County because they have not deposed witnesses or received evidence from the other side. He said Bostock's team will tell their story then.

He did note there was a "timeline in this case" — that in January 2013, Bostock sponsored a gay softball team and months later, he's gone.

Teske said he welcomes a trial.

"There are too many witnesses who know we enjoyed each other's company," he said. "We went to nightclubs together; there were times it was every weekend. I just don't think he told the full story to his lawyers. Sooner or later, this is all going to come out."

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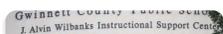
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