

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

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

**PLAINTIFF’S OBJECTIONS TO MAGISTRATE JUDGE’S  
ORDER REGARDING CONFIDENTIAL DESIGNATION**

Pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72 and LR 72.1, ND Ga. Plaintiff Gerald Bostock files the following objections to the Magistrate Judge’s Order denying Plaintiff’s request to remove Defendant’s designation of retired Judge Steven Teske’s diary excerpts as confidential. [Doc. 112.]

Plaintiff objects to the Magistrate Judge’s determination that the diary excerpts are confidential under the Protective Order in this case. The excerpts contain entries that are direct evidence concerning the *central issue* in this case: Was Plaintiff’s sexual orientation a contributing factor in Defendant’s decision to terminate him? When asked about one of the diary entries during his deposition, retired Judge Teske - the undisputed decision maker on Plaintiff’s termination - answered in the affirmative, giving the following response:

Q. So it's an assumption that -- there is an assumption that because he is recruiting in Midtown that he is actually engaging in gay-related activity, and not serious CASA-related activity. That was your assumption; right?

MR. HANCOCK: Object to the form of the question. Go ahead.

A. *Yeah.*

BY MR. BUCKLEY:

Q. Is that a yes?

A. I'm highly -- yeah, I'm highly suspicious that he's up there doing personal, more so personal than business stuff.

Q. And by personal, you mean gay stuff; right?

A. Well, it -- you know, it -- here's the thing, it doesn't matter whether you're gay, you're straight. What makes it suspicious that it was personal is *because he is gay and he was in that venue*, and spending money in the GAL account in that venue, which he could not account for all of the spending.

Q. And that was a contributing factor in your decision to terminate him; right?

A. *It was a contributing factor, okay.*

(Deposition of Steven Teske 177:22-178:20 (emphasis added) (excerpt attached as Ex. A).)

The diary entries concerning Plaintiff go directly to Judge Teske's reasons for firing Plaintiff. They are not confidential under the protective order, relevant caselaw, or the rules of this Court. The Court should reverse the Magistrate Judge and either order that the designated material is not confidential or order Defendant to withdraw the confidential designation.

## I. FACTUAL AND PROCEDURAL HISTORY

The Court previously approved and entered the parties' Consent Protective Order in this case. (Doc. 85.) Following the entry of the Protective Order, Defendant produced and marked "confidential" excerpts from a diary prepared by Steven Teske, the decisionmaker for Plaintiff's termination. Based upon Plaintiff's review, this is the only document Defendant specifically marked as confidential in its entire production.

A number of entries in the diary directly reference Plaintiff, Plaintiff's sexuality, and the decision to terminate Plaintiff.<sup>1</sup> These entries concerning Plaintiff are directly relevant to the core issue in the case: whether Defendant discriminated against Plaintiff based on his sexual orientation.

Plaintiff objected to Defendant's confidential designation under the Protective Order. The parties conferred and were unable to resolve the matter. The Magistrate Judge set a telephonic hearing on the matter for January 13, 2022. Before the hearing,

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<sup>1</sup> Plaintiff has not attached the excerpts as an exhibit due to the disputed confidentiality issue. For the reasons set forth herein, Plaintiff does not believe the excerpts meet the standard for filing under seal. Plaintiff respectfully requests that the Court permit Plaintiff to submit the excerpts for *in camera* review. Should the Court prefer Plaintiff submit the excerpts as a provisionally sealed filing, Plaintiff will certainly do so.

the parties submitted email statements of their positions to the Magistrate Judge. (Doc. 109, 110.)

On January 3, 2022, the Magistrate Judge issued an order denying Plaintiff's request to remove Defendant's designation of excerpts as confidential. (Doc. 112.)<sup>2</sup> As set forth in detail below, that decision is clearly erroneous and should be reversed.

## II. ARGUMENT AND CITATION OF AUTHORITY

### A. Standard of Review

The Court reviews a Magistrate Judge's order on a non-dispositive matter under a "clearly erroneous" standard of review. Fed. R. Civ. P. 72(a); *see also Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985) ("a finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has

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<sup>2</sup> The Magistrate Judge stated in his order that "[t]he designation of the diary as confidential does not prevent a party from filing excerpts from it with the Court" and cited Paragraph 6 of the Protective Order. (Doc. 112 at 2.) The Protective Order also states, however, that "nothing in this order shall prevent a party from filing any documents designated as 'confidential' with the court in support of any motions or other pleadings or papers, or from presenting the same to the court in a hearing, trial, appeal, or otherwise. Any party seeking further protection for Confidential Information filed or to be filed with the Court shall comply with the requirements of the United States District Court for the Northern District of Georgia's Standing Order 04-02 and the Honorable Judge Ross' Instructions regarding the same." (Doc. 85 ¶ 6.) Given the disputed confidential designation of the excerpts, Plaintiff seeks to avoid a dispute if it files the excerpts without seeking under seal filing status.

been committed”) (internal quotation omitted). For the reasons set forth below, the Magistrate Judge committed clear error in ordering the excerpts to remain confidential.

**B. The Excerpts Are Not Confidential Under Any Applicable Standard**

Defendant’s confidential designation is at odds with the Protective Order, controlling case law, and the rules of this Court. First, Defendant’s designation of the excerpts as “confidential” is contrary to the terms of the Protective Order. Under the Order, the parties agreed to "designate as 'confidential' only those documents which truly contain private and highly sensitive information..." (Doc. 85 at ¶ 4). The Consent Protective Order does not define the phrase "private and highly sensitive information," but courts that have applied similar terms have typically included things like medical information, financial information, and/or family matters. *See Brown v. Vivint Solar, Inc.*, 2020 WL 3250191, at \*3 (M.D. Fla. Apr. 28, 2020) (financial information); *U.S. v. Bradley*, 2007 WL 1703232, at \*1 (S.D. Ga. June 11, 2007) (noting that "courts routinely enter protective orders for personal medical information"); *In re Jolly Roger Cruises & Tours, S.A.*, 2011 WL 1467172, at \*3 (S.D. Fla. Apr. 18, 2011) (stating that "the sensitive nature of" records concerning "psychological counseling sessions related to personal family relationships" was plain).

The excerpts – in addition to containing discussion of Plaintiff, Plaintiff’s sexuality, and Plaintiff’s termination - simply recount daily events and give some comments on those events. Examples include recounting a trip to theatre shows or movies, mentioning that it snowed and that school was cancelled, and recounting or planning out-of-town trips.

This is not “private and highly sensitive information.” There is no discussion of issues such as financial information, medical information, or sensitive family matters that might be "private and highly sensitive information." Portions of the diary are already redacted and/or omitted, and an additional confidentiality designation is not warranted on the portions that have been produced.

More importantly, the excerpts also discuss the thought processes of the decisionmaker regarding Plaintiff’s termination, referencing the fact that he is “gay” or using the term “gay” with respect to his activities no fewer than seven times on selected pages, and *five times in the specific journal entry explaining his reasons for firing Plaintiff.* That information, which concerns *the pivotal issue in this case*, cannot be confidential.

Plaintiff’s position is also supported by Eleventh Circuit and Supreme Court caselaw. It is clearly established that the general public possesses a common-law right to access judicial records and that judicial records are presumed to be public

documents. See *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978); see also *Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1311 (11th Cir. 2001). This is so because “[o]nce a matter is brought before a court for resolution, it is no longer solely the parties' case, but also the public's case.” See *Brown v. Advantage Eng'g, Inc.*, 960 F.2d 1013, 1016 (11th Cir. 1992).

Similarly, under the Court’s Local Rules, documents filed in court are presumptively public. (NDGA Rules App. H – at A 18.) NDGA Standing Order 04-02 describes the following limited categories of information to be redacted: Social Security Numbers, names of minor children, dates of birth, financial account numbers and home addresses. See also this Court’s Standing Order at page 6 stating that “[a]s a general matter, this Court will seal only those items enumerated in the Court’s Standing Order 04-02 regarding sensitive information and public access to electronic case files.” None of the excerpts designated “confidential” fall into these categories.

To be clear, Plaintiff does not seek to file any portions of the excerpts that do not reference Plaintiff, his sexuality, or Plaintiff’s termination. Plaintiff is willing to redact any other parts. But Defendant – by asserting blanket confidentiality - is essentially trying to place under seal *direct evidence* on the *central issue* in this case.

In arguments to the Magistrate Judge, Defendant expressed its “concern” that “Plaintiff’s counsel may have ulterior motives for seeking the removal of the confidentiality designation.” (Doc. 110 at 2.) Defendant’s professed concern is apparently based upon its belief that Plaintiff’s counsel will “distribute” the excerpts to the media. (*Id.*) Such rank speculation ignores two important facts.

First - while Defendant might wish to keep the excerpts – and by extension evidence concerning the central issue in this case - out of public view, this is completely contrary to authorities cited above that documents filed in court are presumptively public and that “[o]nce a matter is brought before a court for resolution, it is no longer solely the parties' case, but also the public's case.” *See Brown*, 960 F.2d at 1016. If Defendant’s are worried about the public knowing the content of Judge Teske’s writing concerning Plaintiff and his sexuality, that speaks volumes as to the nature of his statements. But it is not a valid basis for concealing them.

Second, it was Judge Teske, not Plaintiff, who made Plaintiff’s termination a media issue in the first place by giving a televised interview concerning Plaintiff’s termination the *very day* Plaintiff was fired, publicly disparaging Plaintiff in the process. *See* <https://www.wsbtv.com/news/local/clayton-court-official-under->

[investigation-over-mi/243075701/](#). And he certainly has not been shy about doing so since. (Teske Dep. Exs. 38, 78 (attached as Ex. B.)

Any alleged concerns from Defendant about Plaintiff supposedly going to the press are a red herring. Defendant simply does not like what Judge Teske wrote and does not want it on the public record since it contradicts its defense in this case. But that is not a basis to keep a document sealed or otherwise shielded from public view, particularly when it is central to the question of Clayton County's liability.

### III. CONCLUSION

Although Defendant clearly wants to wrap the diary excerpts and any briefs or other filings citing them in a "plain brown wrapper," thereby hiding its liability from the public, that position is at odds with controlling caselaw and the plain language of the protective order. Mr. Bostock respectfully requests that this Court reject the Magistrate Judge's order, and either order that the designated material is not confidential or order Defendant to withdraw the confidential designation.

Respectfully submitted this 27th day of January 2022.

/s/ Edward D. Buckley

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*Counsel for Plaintiff*

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<b>CLAYTON COUNTY,</b>	)	
	)	
<b>Defendant.</b>	)	

**CERTIFICATE OF COMPLIANCE**

The undersigned certifies that the foregoing has been prepared in Times New Roman 14 font, as approved by the Court in LR 5.1B.

*/s/ Edward D. Buckley*  
Georgia Bar No. 092750

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 27, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all counsel of record.

BUCKLEY BEAL, LLP

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Counsel for Plaintiff

**EXHIBIT A**

[REDACTED]

[REDACTED]

22 Q. So it's an assumption that -- there is an  
23 assumption that because he is recruiting in Midtown that  
24 he is actually engaging in gay-related activity, and not  
25 serious CASA-related activity. That was your

1 assumption; right?  
2 MR. HANCOCK: Object to the form of the  
3 question. Go ahead.  
4 A. Yeah.  
5 BY MR. BUCKLEY:  
6 Q. Is that a yes?  
7 A. I'm highly -- yeah, I'm highly suspicious that  
8 he's up there doing personal, more so personal than  
9 business stuff.  
10 Q. And by personal, you mean gay stuff; right?  
11 A. Well, it -- you know, it -- here's the thing,  
12 it doesn't matter whether you're gay, you're straight.  
13 What makes it suspicious that it was personal is because  
14 he is gay and he was in that venue, and spending money  
15 in the GAL account in that venue, which he could not  
16 account for all of the spending.  
17 Q. And that was a contributing factor in your  
18 decision to terminate him; right?  
19 A. It was a contributing factor, okay.  
20 Q. Okay.  
21 [REDACTED]

[REDACTED]

**EXHIBIT B**

11/23/2020

Georgia judge who fired gay worker: Sexual orientation wasn't a factor

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EXHIBIT

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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

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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 Steven Teske, who is Clayton County

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Juvenile Court's chief judge.

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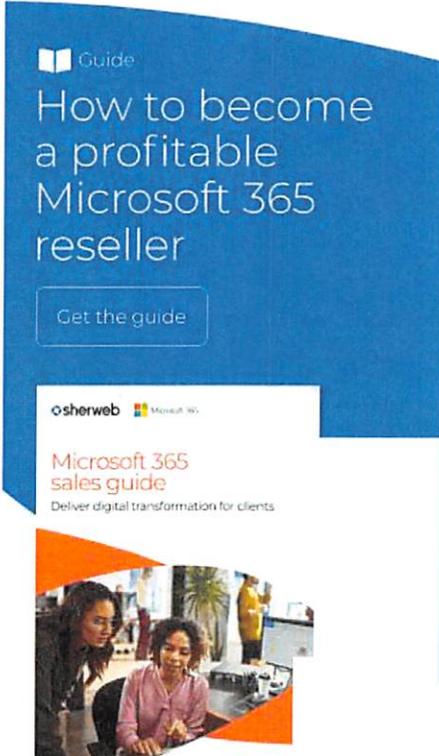
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He's also the "villain" in this proceeding.

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.

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11/23/2020

Georgia judge who fired gay worker: Sexual orientation wasn't a factor

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“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."

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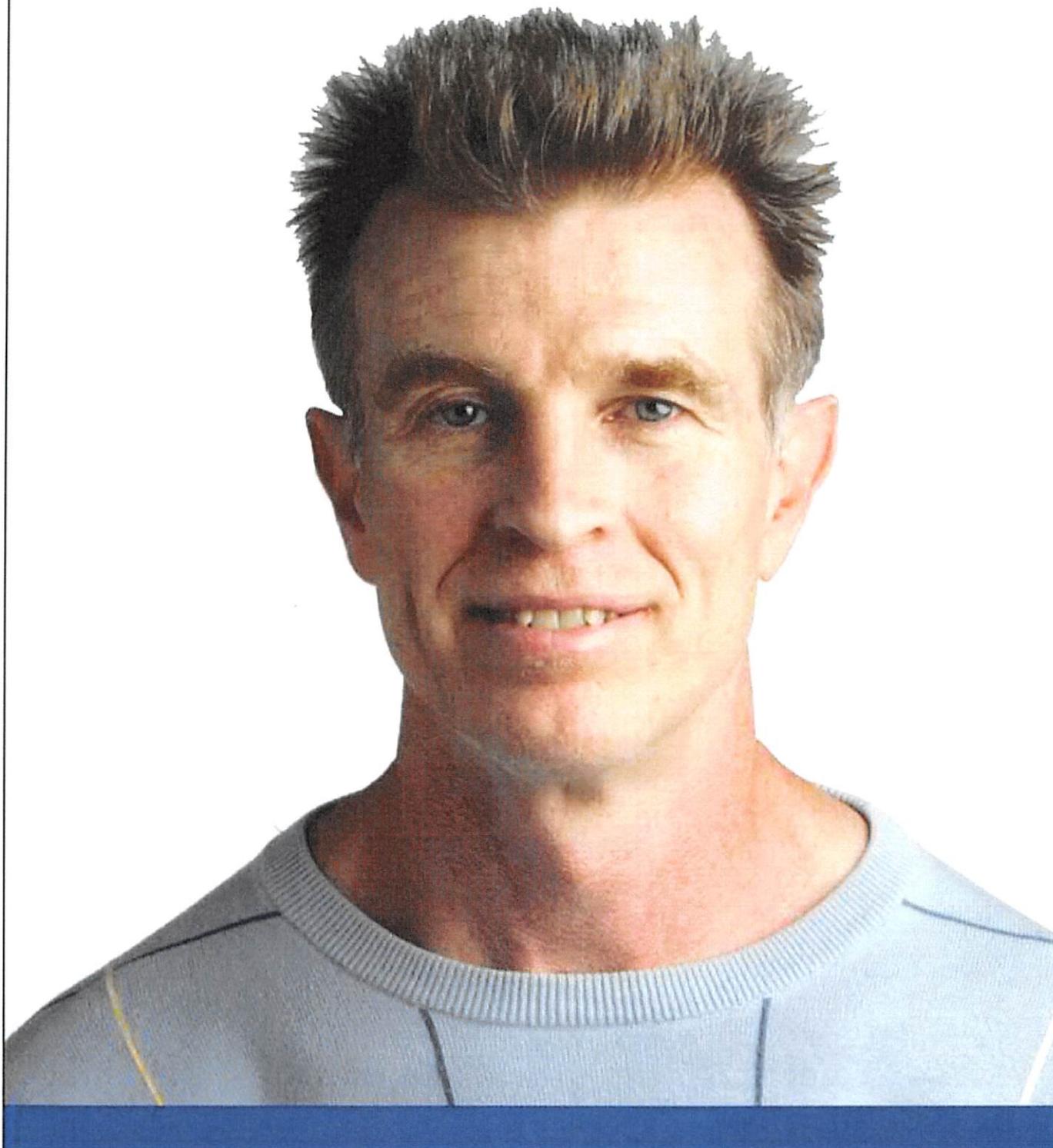
**Worth Reading**

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

11/23/2020

Georgia judge who fired gay worker: Sexual orientation wasn't a factor

— *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.

11/23/2020

Georgia judge who fired gay worker: Sexual orientation wasn't a factor

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."

So what is 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."

11/23/2020

Georgia judge who fired gay worker: Sexual orientation wasn't a factor

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."



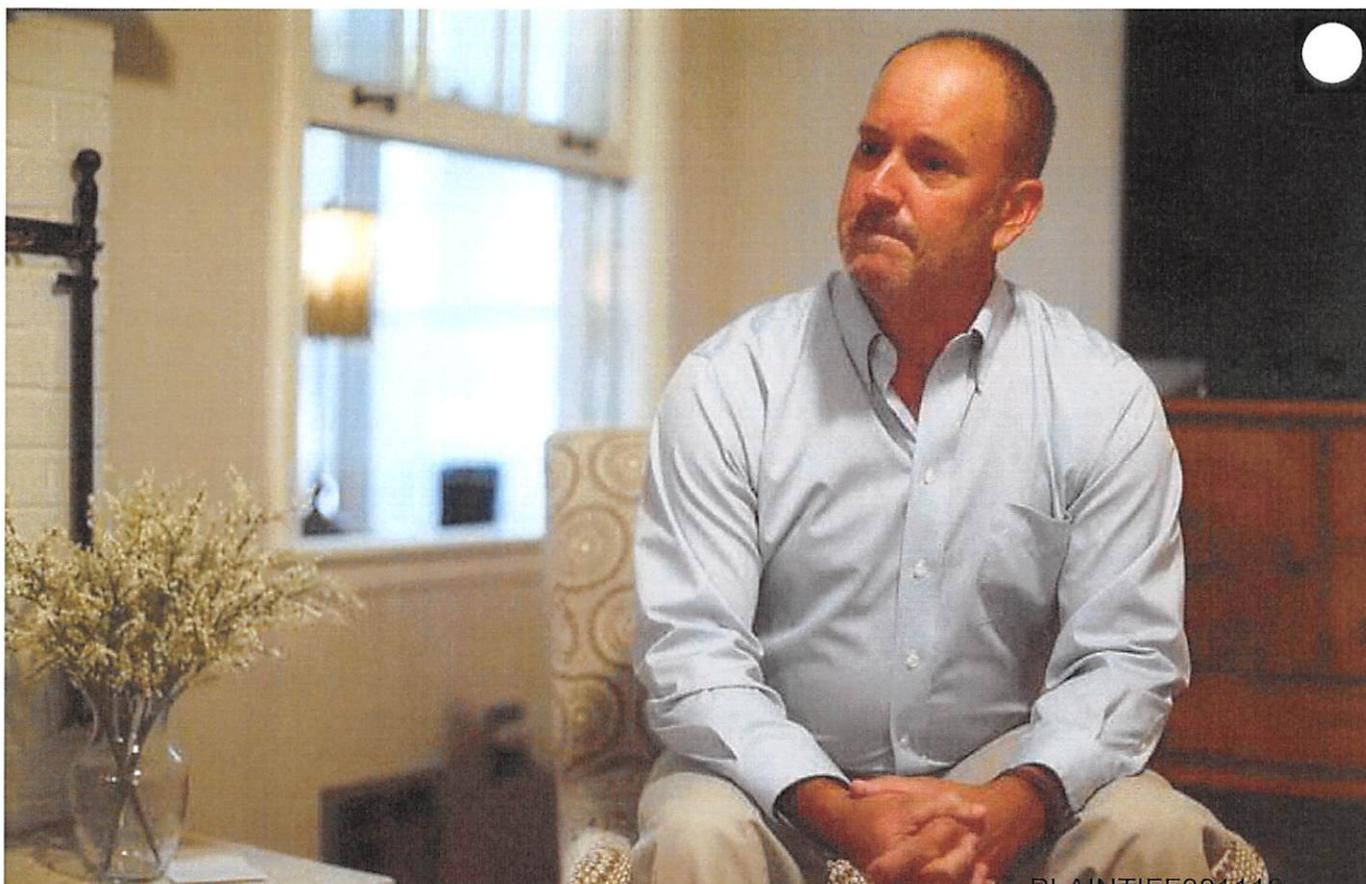
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Georgia judge who fired gay worker: Sexual orientation wasn't a factor



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.



PLAINTIFF001119

11/23/2020

Georgia judge who fired gay worker: Sexual orientation wasn't a factor



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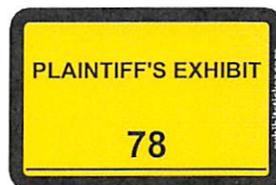
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## Landmark SCOTUS Ruling Is Only the Beginning for Bostock's Discrimination Claims

"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](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."

Teske said Hancock has not asked him whether the county should continue to litigate the case, but said he believes the county will continue it.

"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."

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