

Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **13th day of May, 2021** are as follows:

BY Griffin, J.:

2020-C-01231

ARNOLD LOWTHER, ET AL. VS. TOWN OF BASTROP (Parish of Morehouse)

REVERSED AND REMANDED. SEE OPINION.

Retired Judge Robert L. Lobrano, appointed Justice ad hoc, sitting for McCallum, J., recused in case number 2020-C-01231 only.

Hughes, J., dissents and assigns reasons.

SUPREME COURT OF LOUISIANA

No. 2020-C-01231

ARNOLD LOWTHER, ET AL.

VS.

TOWN OF BASTROP

*On Writ of Certiorari to the Court of Appeal, Second Circuit,
Parish of Morehouse*

GRIFFIN, J.*

We granted this writ application to address the specific question of whether there is a cause of action for a writ of mandamus compelling a municipality to satisfy a judgment for back wages owed to its firefighter employees. Based on the ministerial nature of the statutorily and constitutionally mandated duty of the municipality to appropriate funds to satisfy the judgment, we find the lower courts erred in sustaining the exception of no cause of action.

FACTS AND PROCEDURAL HISTORY

In 2008, thirty-two current and former firefighters (“the Firefighters”) filed suit against their employer, the City of Bastrop¹ (“the City”), alleging the City’s pay practices violated state law. In 2014, the trial court issued a declaratory judgment ordering the City to create a compliant uniform salary plan. For nearly two years, the City failed to enact this plan. Subsequently, by judgment dated December 19, 2016, the trial court adopted the Firefighters’ proposed salary plan backdated to January 2005. On May 6, 2019, following a trial on quantum, judgment for back

* Retired Judge Robert L. Lobrano, appointed Justice *ad hoc*, sitting for Justice Jay B. McCallum.

¹ Although styled as a “town” in the case caption, La. R.S. 33:341 provides that a municipality having five thousand or more inhabitants is classified as a “city.” As of the 2010 Census, Bastrop had a population of 11,365.

wages was rendered in favor of the Firefighters for the aggregate amount of \$1,673,805.91 (“the May 2019 judgment”).

The Firefighters sought to enforce the May 2019 judgment by filing a writ of mandamus. The City filed an exception of no cause of action arguing the Firefighters are statutorily and constitutionally prohibited from using a writ of mandamus as an alternative means to execute a judgment against a political subdivision. In their amended petition, the Firefighters averred the City has a ministerial duty to: 1) pay the Firefighters the amount owed in satisfaction of the May 2019 judgment; and/or 2) appropriate the funds necessary to pay the Firefighters as mandated by applicable law. The trial court sustained the City’s exception of no cause of action and dismissed the Firefighters’ amended petition for a writ of mandamus with prejudice.

On review, the court of appeal succinctly observed the issue turned on whether the action requested by the Firefighters’ writ of mandamus is ministerial in nature. *Lowther v. Town of Bastrop*, 53,586, p. 4 (La.App. 2 Cir. 9/23/20), 303 So.3d 681, 686. Citing La. Const. art. XII, § 10(C) and La. R.S. 13:5109(B)(2), the court of appeal concluded that the “[p]ayment of a judgment is not a ministerial act.” *Id.*, 53,586, p. 6, 303 So.3d at 607. Thus, no cause of action lies because the Firefighters may not enforce the May 2019 judgment by a writ of mandamus – an appropriation of funds must be authorized by the City. *Id.*, 53,586, pp. 6-7, 303 So.3d at 687.

The Firefighters’ writ application to this Court followed, which we granted. *Lowther v. Town of Bastrop*, 20-1231 (La. 1/26/21), 309 So.3d 347.

DISCUSSION

The narrow issue before this Court is whether the Firefighters have stated a cause of action for a writ of mandamus. An exception of no cause of action tests the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged. *Jackson v. City of New Orleans*, 12-2742, p. 24 (La. 1/28/14), 144 So.3d 876, 895. “All well-pleaded allegations of fact are accepted as true and

correct, and all doubts are resolved in favor of sufficiency of the petition so as to afford litigants their day in court.” *Id.* Because it presents questions of law, the sustaining of an exception of no cause of action is subject to *de novo* review. *Id.*

A writ of mandamus is an extraordinary remedy that is directed at a public officer to compel the performance of a ministerial duty required by law. *Jazz Casino Co., L.L.C. v. Bridges*, 16-1663, p. 5 (La. 5/3/17), 223 So.3d 488, 492 (citing La. C.C.P. arts. 3861 and 3863). “A ‘ministerial duty’ is one ‘in which no element of discretion is left to the public officer,’ in other words, ‘a simple definite duty, arising under conditions admitted or proved to exist, and imposed by law.’” *Id.* (quoting *Hoag v. State*, 04-0857, p. 7 (La. 12/1/04), 889 So.2d 1019, 1024). “If a public officer is vested with any element of discretion, mandamus will not lie.” *Id.*

The Louisiana Constitution enables the legislature to “limit or provide for the extent of liability of the state, a state agency, or a political subdivision.” La. Const. art. XII, § 10(C). The Article specifically provides that “[n]o judgment against the state, a state agency, or a political subdivision shall be exigible, payable, or paid except from funds appropriated therefor by the legislature or by the political subdivision against which the judgment is rendered.” *Id.* The legislature enacted La. R.S. 13:5109(B)(2)² which further emphasizes that any such judgment is only payable by funds appropriated for that specific purpose.

The Louisiana Constitution also prohibits any law from requiring increased expenditures within a political subdivision absent either its approval by the political subdivision, the appropriation of funds by the legislature to the political subdivision, or a law providing for a local funding source which the political subdivision is authorized to levy and collect. See La. Const. art. VI, § 14(A)(1). However, this

² “Any judgment rendered in any suit filed against the state, a state agency, or a political subdivision, or any compromise reached in favor of the plaintiff or plaintiffs in any such suit shall be exigible, payable, and paid only out of funds appropriated for that purpose by the legislature, if the suit was filed against the state or a state agency, or out of funds appropriated for that purpose by the named political subdivision, if the suit was filed against a political subdivision.”

prohibition is expressly made inapplicable to any “law[s] providing for civil service, minimum wages, hours, working conditions, and pension and retirement benefits, or vacation or sick leave benefits for firemen and municipal policemen.” La. Const. art. VI, § 14(A)(2)(e). Various provisions of Title 33 of the Louisiana Revised Statutes mandate minimum pay and benefits that firemen shall receive from municipalities of a certain population. See La. R.S. 33:1992(A) (mandates a specified minimum salary based on rank); La. R.S. 33:1992(B) (mandates longevity raises of two percent per annum); and La. R.S. 33:1969 (mandates equal compensation for equal performance of duty and responsibility).

The Firefighters argue that La. Const. art. VI, § 14(A)(2)(e), in conjunction with La. R.S. 33:1992(A), La. R.S. 33:1992(B), and La. R.S. 33:1969, gives them a statutorily mandated and constitutionally protected right to payment of the back wages quantified in the May 2019 judgment. Therefore, the combination of these laws serve as either a *de facto* appropriation or make the appropriation for payment of the back wages a ministerial function.

The City acknowledges its duty to pay the Firefighters and that La. Const. art. VI, § 14(A)(2)(e) allows for increased expenditure on a political subdivision to pay the same without a dedicated funding source. However, the City counters that the Firefighters are subject to the dictates of La. Const. art. XII, § 10(C) and La. R.S. 13:5109(B) because, as judgment creditors, the Firefighters “cannot compel political subdivisions to appropriate funds for the payment of a judgment rendered against that subdivision through a writ of mandamus.” *Newman Marchive Partnership, Inc. v. City of Shreveport*, 07-1890, p. 5 (La. 4/8/08), 979 So.2d 1262, 1266 (citing *Hoag*, 04-0857, pp. 5-6, 889 So.2d at 1023). Thus, the City urges this Court to recognize a distinction between its underlying obligation to pay the Firefighters and its duty to appropriate funds to satisfy the May 2019 judgment – the latter of which, the City argues, is a discretionary function. This distinction is without merit.

Mandamus may lie against a political subdivision when the duty to be compelled is ministerial and not discretionary. In *Hoag*, this Court observed that the relevant consideration is “whether the act of appropriating funds to pay the judgment ... is a purely ministerial duty for which mandamus would be appropriate.” 04-0857, p. 6, 889 So.2d at 1023. Because the duty to pay the Firefighters is statutorily and constitutionally mandated, it is ministerial in nature. See *Jazz Casino*, 16-1663, p. 9, 223 So.3d at 495 (appropriation of funds to pay refund judgment for overpaid taxes is a ministerial duty as mandated by La. R.S. 47:1621 and La. Const. art. VII, § 3(A)); *Parish of St. Charles v. R.H. Creager, Inc.*, 10-0180, p. 13 (La.App. 5 Cir. 12/14/10), 55 So.3d 884, 892-93 (appropriation of funds to pay judgment of damages in expropriation case is a ministerial duty because the expropriation statutes and La. Const. art. I, § 4(B) make payment of fair and just compensation mandatory and not discretionary). The Firefighters are only requesting the courts to enforce the positive law and not legislate a judicial solution. See *Peron v. Evangeline Parish Police Jury*, 01-0603, p. 10 (La. 10/16/01), 798 So.2d 67, 73.

The City’s reliance on *Newman* and *Hoag* for the proposition that the Firefighters are indistinguishable from any other judgment creditor is inapposite. In *Jazz Casino*, we distinguished the mandatory nature of paying judgments for tax overpayment refunds and expropriation compensation from the discretionary nature of paying judgments arising from matters of contract or tort. 16-1663, pp. 10-11, 223 So.3d at 495-96. Thus, *Newman* is distinguishable because the judgment therein adjudicated a breach of contract claim. 07-1890, pp. 1-2, 979 So.2d at 1264. *Hoag* is distinguishable because plaintiffs therein sought payment from the legislature itself in contravention of La. Const. art. III, § 16. 04-0857, pp.7-8, 889 So.2d 1019, 1024; *New Orleans Fire Fighters Pension & Relief Fund v. City of New Orleans*, 13-0873, p. 15 (La.App. 4 Cir. 12/18/13), 131 So.3d 412, 421-22. In contrast, the matter *sub judice* presents no such conflict.

The clear language of La. Const. art. VI, § 14(A)(2)(e) and the Title 33 provisions reflect a mandate from the legislature that imposes a ministerial duty on the City to appropriate funds to pay the Firefighters back wages irrespective of La. Const. art. XII, § 10(C) and La. R.S. 13:5109(B). *See New Orleans Fire Fighters*, 13-0873, p. 19, 131 So.3d at 424. “If one constitutional provision addresses a subject in general terms, and another with the same subject in a more detailed way, the two should be harmonized if possible, but if there is any conflict, the latter will prevail.” *Perschall v. State*, 96-0322, p. 22 (La. 7/1/97), 697 So.2d 240, 255. This Court has observed that the fire and police minimum wage provision of La. Const. art. VI, § 14 acts as “a positive reaffirmance of the plenary power of the legislature to guarantee adequate fire and police protection for all citizens of Louisiana.”³ *New Orleans Firefighters Ass’n v. Civil Service Com’n of City of New Orleans*, 422 So.2d 402, 409 (La. 1982). The record of the constitutional convention proceedings reinforces “the obviously compelling state interest” in providing this protection. *Id.*, 422 So.2d at 408. That “several delegates deplored the failure of local governing authorities to give these needs a higher priority than other community programs” undermines the notion that La. Const. art. VI, § 14(A)(2)(e) affords any discretion as to appropriation on the part of political subdivisions.⁴ *Id.* Thus, the express

³ Although this Court was interpreting La. Const. art. VI, § 14 as originally enacted in the 1974 Louisiana Constitution, the exception pertaining to fireman and municipal policeman was present in that version:

No law requiring increased expenditures for wages, hours, working conditions, pension and retirement benefits, vacation, or sick leave benefits of political subdivisions employees, *except a law providing for civil service, minimum wages, working conditions, and retirement benefits for firemen and municipal policemen*, shall become effective until approved by ordinance enacted by the governing authority of the affected political subdivision or until the legislature appropriates funds for the purpose to the affected political subdivision and only to the extent and amount that such funds are provided. This Section shall not apply to a school board. (Emphasis added).

⁴ “I don’t know of any firemen or any policemen who has ever refused to go outside of his area to answer a call. I just want you to take that into consideration. I think the lives of the whole state, the property of the whole state is involved in this issue, *and I think as a result of that, the legislature ought to have something to say about how they operate* so that we can be sure that the lives and

exception for firemen from the overall limitations of La. Const. art. VI, § 14 is a considered judgment by the legislature that the wage and benefit guarantees could be mandated on political subdivisions even in the absence of an appropriation by the subdivision itself.⁵ See *Johnson v. Marrero-Estelle Volunteer Fire Co.*, No. 1, 04-2124, p. 9 (La. 4/12/05), 898 So.2d 351, 358.

The ministerial nature of the duty of the City to pay the Firefighters does not change to a discretionary one simply because the Firefighters obtained a monetary judgment confirming and quantifying the City's payment obligation. Adopting such a distinction would allow the City to disregard its mandatory obligations pursuant to La. Const. art. VI, § 14(A)(2)(e), La. R.S. 33:1992(A), La. R.S. 33:1992(B), and La. R.S. 33:1969 under the guise that a court-issued mandamus compelling performance of these ministerial duties violates the separation of powers doctrine. See *Jazz Casino*, 16-1663, p. 13, 223 So.3d at 497; *New Orleans Fire Fighters*, 13-0873, p. 20, 131 So.3d at 424. This result would defeat the very purpose of the express constitutional protections to which the Firefighters are entitled.

The action requested by the Firefighters' amended petition for a writ of mandamus is the City's ministerial duty to appropriate funds necessary to satisfy the May 2019 judgment as required by La. Const. art. VI, § 14(A)(2)(e), La. R.S.

property of all of our citizens are protected as much as possible.” *Id.*, 422 So.2d at 408 n. 5 (quoting Delegate DeBlieux) (emphasis added).

“Delegate Rayburn commented that ‘that’s the only reason ... the legislature has helped the fireman and policeman as much as they have. They couldn’t get help locally; they had no recourse; they had no other place to go but the legislature.’” *Id.*, 422 So.2d at 408 n. 6.

⁵ In *Carriere v. St. Landry Parish Police Jury*, 97-1914, p. 5 (La. 3/4/98), 707 So.2d 979, 981-82, this Court observed that prior to Acts 1991, No. 1066, § 1 – which amended La. Const. art. VI, § 14 to include increased expenditures for any purpose – “it was not uncommon for the legislature to impose mandatory duties on parish governing bodies that required appropriation of funds without providing a corresponding funding source.” The amendment made it beyond the power of the judiciary to compel appropriation “unless there already exists a clear legislative mandate to do so.” *Id.* Because the exception regarding wages and benefits for firemen has been in La. Const. art. VI, § 14 since its original enactment, there has always been, and continues to be, a legislative mandate to compel appropriation for the payment of wages and benefits for firemen.

33:1992(A), La. R.S. 33:1992(B), and La. R.S. 33:1969.⁶ Accordingly, we find the Firefighters’ allegations that the City has failed to perform this duty state a valid cause of action.

DECREE

For the foregoing reasons, the judgment of the trial court sustaining the City’s exception of no cause of action is reversed, and the matter is remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED

⁶ The absence of an express authorization for use of mandamus in these provisions does not preclude it, rather, at trial, the Firefighters would be “required to show that relief is not available by ordinary means or that the delay involved in obtaining ordinary relief may cause injustice as required by La. C.C.P. art. 3862.” *Jazz Casino*, 16-1663, p. 12, 223 So.3d at 496-97.

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No. 2020-C-01231

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HUGHES, J., dissents with reasons.

Respectfully, I would affirm the decision of the trial court and the court of appeal. This matter involves enforcement of a money judgment. The constitutional and statutory protections afforded public bodies against the enforcement of money judgments cannot be discarded based on the nature of the underlying obligation which resulted in judgment. Money judgments are rendered against public bodies all the time, for very good reasons. There is a distinction between the ongoing duty to pay the firefighters and the past due amount reduced to judgment after litigation. The “worthiness” of the underlying obligation is a political decision to be made by the governing authority of the public body which has been cast in judgment, not a decision for the courts.