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Supreme Court No: 97306-7
Okanogan Co. Sup. Ct. Cause No.: 19-2-00179-24

**IN THE SUPREME COURT OF
THE STATE OF WASHINGTON**

In Re:

The Matter of Recall Charges Against Christa “Teagan” Levine,
City Council Member of the City of Tonasket

APPELLANT'S BRIEF

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Table of Contents

A. Introduction	1
B. Assignment of Error and Issues for Review.....	1
C. Statement of the Case	1
D. Argument & Authority	4
1. The Trial Court Exceeded its Authority	4
2. The Charges, Taken as True, were Sufficient	6
E. Conclusion.....	7

Table of Authorities

Washington State Supreme Court Cases

<i>Cole v. Webster</i> , 103 Wn.2d 280, 692 P.2d 799 (1984)	5
<i>In re Shipman</i> , 125 Wn.2d 683, 886 P.2d 1127 (1995)	6
<i>Recall of Beasley</i> , 128 Wn.2d 419, 908 P.2d 878 (1996)	5, 6
<i>Recall of Pepper</i> , 189 Wn.2d 546, 403 P.3d 839 (2017)	4, 6
<i>Recall of Wasson</i> , 149 Wn.2d 787, 72 P.3d 170 (2003)	4
<i>Recall of West</i> , 155 Wn.2d 659, 121 P.3d 1190 (2005)	5

Statutes

RCW 29A.56.140	4
RCW 29A.56.220	6
RCW 29A.56.250	6

A. INTRODUCTION

Ms. Brenda Jones, Petitioner-Appellant, was one of two registered voters residing within the City of Tonasket, who filed the Recall Petition in this matter. She seeks a determination by this Court of the legal and factual sufficiency of her Petition.

The Okanogan County Superior Court permitted and considered extensive factual submissions from Ms. Levine and other witnesses, ultimately denying the Petition.

B. ASSIGNMENT OF ERROR AND ISSUES FOR REVIEW

1. Whether the Superior Court erred in exceeding its limited factfinding functions, if any, under RCW 29A.56.140; and
2. Whether the recall charges, accepted as true, establish a legal and factual basis for recall.

C. STATEMENT OF THE CASE

The relevant facts are brief. On May 1, 2019, Appellant filed a recall petition against Christa “Teagan” Levine, city council member for the City of Tonasket. *See Clerk’s Papers (“CP”)* at 104. As per the statutory procedure in Chapter 29A.56, the matter was set for hearing to determine the sufficiency of the allegations. *Id.* at 112. On May 15, 2019, the hearing was held. *See Report of Proceedings (“RP”)*.

The sufficiency hearing for the Levine Recall followed the hearing in the Ritter Recall¹. *See RP* at 5. Counsel immediately reiterated the Court's function:

MR. CHASE: Thank you, Your Honor, and to go back into again, Your Honor, the Court's role today, and I'm quoting from the *In Re Recall of Beasley*, that is 128 Wn.2d 419. Although the Court serves as a gateway function in the recall process, we do not attempt to evaluate the truthfulness of the charges in a petition. That's the clear distinction for today, Your Honor. The actual triers of fact, the folks that will actually decide who's telling the truth and who's not, is the voters of the City of Tonasket. It's not this Court...

RP at 5:16-25. But as in the Ritter case before it, the Court entertained factual disputes:

THE COURT: [...] I thought the contact with Trisha Jones, you indicate that it violated the quorum or there was a quorum there, as such. I didn't think it started out as a quorum.

MR. CHASE: It did not, Your Honor. Ms. Sackman arrived creating the quorum when they were continuing their conversation with Ms. Tisha Jones.

THE COURT: I see. That's what it --- okay.

MR. CHASE: And that's what's in the petition, Your Honor, which is factually taken as true for these purposes today.

* * *

¹ Pending before this Court as Cause No. 97305-9. While the cases are not consolidated, the Appellant's Brief in the Ritter matter provides additional context to some of the quoted material herein because the cases were heard one after another.

[MR. CRANDALL:] [...] In fact, Jensen - -- Jensen Sackman denies being there at all that day, but that's getting into the tit for tat of who did what credibility issues.

RP at 14:8-18; 20:6-9. The Court mentioned this dispute in its May 22, 2019 opinion. *CP* at 6.

As with the Ritter case, Ms. Levine submitted responsive declarations. *RP* at 16:4-5 (Mr. Howe's Declaration); 24:11 (Ms. Levine's Declaration). Mr. Crandall (also Counsel for Ms. Levine) gave appropriate argument on the legal issues of sufficiency, but again argued factual rebuttals. *See Id.*

Counsel for the Appellant reiterated again the Court's duty to take the factual assertions as true. Again, the Appellant highlights this because of the separation of powers issue:

Whether it's true or not, is for the voters of the City of Tonasket to decide. Recall petition has a number of hurdles that it has to go through still. Once the Court grants it, it will go forward. Ms. Jones has a lot of homework to go do. She needs to go get a lot of signatures. She's got a lot of stuff to go do.

* * *

This is factually sufficient to present to the voters. They may not vote to remove her. It might happen, we don't know. What we're here for today is to establish that a recall petition is warranted and that the City of Tonasket and its citizens are entitled to vote on these issues and that's all we're asking the Court to do today.

RP at 27:19-24; 28:15-20. Now, Ms. Jones asks this Court to determine the sufficiency of the Recall Petition against Ms. Levine using the appropriate, statutory standard.

D. ARGUMENT & AUTHORITY

1. The Trial Court Exceeded its Authority

Under RCW 29A.56.140, the trial court “shall not consider the truth of the charges, but only their sufficiency.” This statute provides for a “highly limited” role for Courts in the recall process. *Recall of West*, 155 Wn.2d 659, 662, 121 P.3d 1190 (2005).

The courts do not evaluate the truthfulness of a petitioner’s charges, instead considering only whether the charges are both factually and legally sufficient. Therefore, courts must determine ‘whether, accepting the allegations as true, the charges on their fact support the conclusion that the officer abused his or her position.’

Recall of Bolt, 117 Wn.2d 168, 173-74, 298 P.3d 170 (2013) (citing *Recall of Wasson*, 149 Wn.2d 787, 792, 72 P.3d 170 (2003)).

This Court’s prior decisions indicate that the trial court may draw limited *conclusions* from facts², but that “it is the voters, not the courts, who will ultimately act as the fact finders.” *Recall of Pepper*, 189 Wn.2d 546, 554, 403 P.3d 839 (2017). This, along with the highly unusual and specific statutory language in RCW 29A.56.110 (“The court shall not consider the

² Subject to review under the substantial evidence standard, unlike the remainder of the alleged facts, which are subject to *de novo* review.

truth of the charges, but only their sufficiency.”) extinguishes all factfinding³ power.

Here, the Court observed that there were disputed facts, considered factual submissions by the Respondent (*See e.g. CP* at 6), assumed the existence of other facts (*See Id.* at 7), and speculated about the intent of the Respondents (*Id.* at 8). These are all functions reserved for the voters; the Court’s analysis should have begun with a stronger presumption than even “light most favorable.” The Court was required to “accept[] the allegations as true...” *Recall of Pepper*, 189 Wn.2d at 555. The trial court exceeded its gatekeeping function. The purpose of the factual sufficiency requirement is to avoid frivolous or unsubstantiated petitions – meaning that the charges must be substantiated by *identifiable* facts. *Recall of Beasley*, 128 Wn.2d 419, 424-25, 908 P.2d 878 (1996). It is for the voters to decide if the identified facts are *disputed*, and to resolve the same by voting.

The recall statutes are set up to avoid litigating factual disputes in Superior Court:

Both persons may appear with counsel. The court may hear arguments as to the sufficiency of the charges and the adequacy of the ballot synopsis. The court shall not consider the truth of the charges, but only their sufficiency.

³ *Cole v. Webster*, 103 Wn.2d 280, 692 P.2d 799 (1984) suggests that the court may *voir dire* the Petitioner as to their basis of knowledge, but no further. *Id.* at 288. This underscores Ms. Jones’ argument herein – the scope of any factfinding power is so limited that the trial court overstepped in this case.

RCW 29A.56.140. This statute does not provide for responsive *factual* pleadings before Superior Court – only argument as to the sufficiency determination. Thus, to the extent the trial court admitted and considered a factual response, this was error. To be clear, the Appellant’s argument is not that no pleadings could be filed – merely that such pleadings are limited to legal issues.

The Respondent’s *factual* response is provided for in RCW 29A.56.220 and is filed *after* the date for the recall election has been set. *See* RCW 29A.56.220. The response is then tendered directly to the voters, not to the Court, by printing it on the ballots. RCW 29A.56.250.

2. The Charges, Taken as True, were Sufficient

The Supreme Court reviews recall petitions using the same criteria as the Superior Court. *Recall of Beasley*, 128 Wn.2d at 424 (citing *In re Shipman*, 125 Wn.2d 683, 684, 886 P.2d 1127 (1995)). While review is *de novo*, the trial court’s factual conclusions are affirmed on a substantial evidence standard. *Recall of Pepper*, 189 Wn.2d at 554.

But here, the Appellant argues that the review must be nearly entirely *de novo* because the trial court’s factual conclusions were tainted by the admission of improper evidence that should not have been considered.

Regardless, Ms. Jones stands on the factual allegations in the initial Recall Petition (*CP* at 16-97) and the arguments of counsel at the sufficiency hearing; the record cannot be expanded on appeal.

E. CONCLUSION

The trial court erred because it exceeded its authority. The recall statutes are set up to avoid this very situation – where disputed facts are litigated in Superior Court. It is the purview of the voters, not the court, to decide whether the facts are accurate. Disputed facts may be a powerful rebuttal in the public sphere before the factfinding voters, but there can be no litigation of these issues in the gatekeeping sufficiency hearing before Superior Court.

Ms. Jones submits that the allegations in the recall petition, taken as true, are legally and factually sufficient to permit the recall to proceed. The Court should not consider the factual response of the public officials or other witnesses – this is the factfinding function of the public. To consider such responses at the judicial gatekeeping stage works an impermissible judicial intrusion into voting – the most cherished of fundamental rights reserved to the people.

For the foregoing reasons, Ms. Jones requests that this Court determine the sufficiency of the Recall Petition.

Respectfully submitted this 28 of June, 2019.



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