

DATE FILED: Oct 24 2018 2:59 PM
COURT: DISTRICT COURT
CASE NUMBER: 2018CV149

DISTRICT COURT, LARIMER COUNTY, COLORADO Larimer County Justice Center 201 Laporte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 498-6100	
Plaintiff: ERIC SUTHERLAND, v. Defendant: THE CITY OF FORT COLLINS Indispensable Party: Angela Myer, Larimer County Clerk and Recorder	COURT USE ONLY
By the Court: The Honorable Thomas R. French	Case Number: 2017 CV 219 Courtroom: 5C
ORDER DENYING MOTION FOR POST-TRIAL RELIEF	

Plaintiff Eric Sutherland (hereinafter referred to as "Plaintiff") filed a Motion for Post-Trial Relief alleging that he is entitled to relief under C.R.C.P. Rule 59(a)(3) and (4), because this Court made "grave errors of law" in its *Order re Petition for a Contest Concerning the Form and Content of the City of Fort Collins* (hereinafter referred to as "the Order") filed September 4, 2017. Defendant The City of Fort Collins (hereinafter referred to as "the City") filed a Response objecting to Plaintiff's Motion, and Plaintiff filed a Reply. The Court finds that Plaintiff's Motion is without merit, and denies his request for post-trial relief.

The primary purpose of a Rule 59 motion asking a court to amend its findings or judgment is to give the court an opportunity to correct any errors that it may have made. *In re Marriage of Jones*, 668 P.2d 980, 981 (Colo. App. 1983). The Court finds, after review of the Order, Plaintiff's filings, and the Response filed by the City, that the Order is proper based upon the analysis and rulings therein.

The Court elects not to do a detailed analysis and response to Plaintiff's Motion and arguments raised, because the Court has already filed a seventeen-page order detailing its analysis and rulings. The Court believes that it is appropriate to briefly address the arguments raised by Plaintiff, including two arguments first raised by Plaintiff in the Motion.

I. Jurisdiction

Plaintiff chose to file his Petition with the Court to challenge the form and content of the submission clause in the City's ballot issue under C.R.S. § 1-11-203.5. Now, he questions the Court's jurisdiction to review the submission clause under the form and content criteria found in Section 6(b) of City Charter Article X, but nevertheless contends that the Court does have the jurisdiction to review the submission clause under the criteria in C.R.S. § 31-11-111(3). In support of his argument, Plaintiff cites City Charter Article VII, § 1 and *Town of Frisco v. Baum*, 90 P.3d 845 (Colo. 2004).

Section 1 of City Charter Article VII states, "[t]here shall be a Municipal Court vested with original jurisdiction of all causes arising under the City's Charter and ordinances" (emphasis added). Plaintiff argues that this grant of original jurisdiction to the City's Municipal Court means that the interpretation and application of the City's

Charter is outside the jurisdiction of this Court, based on the Colorado Supreme Court's decision in *Baum*.

However, the Court finds it has concurrent jurisdiction with the City's Municipal Court to hear this matter. "Concurrent jurisdiction" is defined as "[j]urisdiction that might be exercised simultaneously by more than one court over the same subject matter and within the same territory, a litigant having the right to choose the court in which to file the action." *Black's Law Dictionary* (2014, Tenth Edition).

Moreover, *Baum* is inapposite. In *Baum*, the Town of Frisco's charter expressly granted to its municipal court "exclusive original jurisdiction over all matters arising under the Charter, the ordinances, and other enactments of the Town" (emphasis added). 90 P.3d at 846. The Supreme Court held that it was within Frisco's home rule powers under Article XX, § 6.c. of the Colorado Constitution to define the jurisdiction of its municipal court with respect to matters of strictly local and municipal concern, but not for matters of statewide concern. *Id.* at 849. The Court concluded in *Baum*, that because the subject matter of the action before it was of strictly local concern, Frisco's grant of "exclusive original jurisdiction" to its municipal court required the action to be filed in the first instance in Frisco's municipal court. *Id.* at 850.

Here, the Court finds that the City Charter does not grant the Municipal court "exclusive original jurisdiction", but rather concurrent jurisdiction. This interpretation is buttressed by a 1989 election in the City which resulted in an amendment to Section 1 of City Charter Article VII. Prior to the City's March 7, 1989 election, the first sentence of Section 1 in Charter Article VII read: "[t]here shall be a Municipal Court vested with

exclusive original jurisdiction of all causes arising under the Charter and the ordinances of the city” (emphasis added). At the 1989 City election, the voters considered and approved the following amendment to Section 1 of Charter Article VII:

PROPOSED CHARTER AMENDMENT NO. 10

An amendment to Article VII, Section 1 of the City Charter, eliminating reference to the Municipal Court’s jurisdiction as being ‘exclusive,’ thereby clarifying that City Ordinances can create civil remedies in other courts of competent jurisdiction.

Based upon the amendment to the City Charter, the Court finds that the intent of the current Section 1 in Article VII is to vest in the City’s Municipal Court concurrent jurisdiction over matters arising under the City’s Charter and ordinances that are of strictly local and municipal concern, and not exclusive original jurisdiction over such matters. Therefore, the Court finds that it has jurisdiction to hear this matter and render decisions based upon the applicable law, including provisions of the City’s Charter.

II. Criteria to Judge the Ballot Question

Plaintiff argues that the Court erred in applying the form and content criteria in Article X, § 6(b) of the City Charter, instead of the criteria of C.R.S. § 31-11-111(3), as the exclusive authority for deciding the sufficiency of the ballot question presented. The Court addressed this argument at length in its Order and does not deem it necessary to repeat that analysis or those findings. The Court finds that it properly applied the form and content criteria as stated in its Order and incorporates, by reference, that analysis and those findings.

III. TABOR Arguments

Plaintiff argues that TABOR applies. This issue was addressed in detail in the Court's Order. The Court finds that TABOR does not apply for the reasons stated in its Order, and incorporates that portion of its Order by reference.

IV. Single-Subject Requirement

Plaintiff briefly argues that the ballot question violates the single subject requirement in Article V, § 1(5.5) of the State Constitution. The State Constitutional requirement referenced by Plaintiff only applies to statewide ballot measures, not to municipal ballot questions, such as the one at issue in this Motion. *Bruce v. City of Colo. Springs*, 200 P.3d 1140, 1145 (Colo. App. 2008); Art. V, §1(9).

For all the reasons stated above, the Court denies Plaintiff's Motion for Post-Trial Relief.

SO ORDERED: October 24, 2017.



Thomas R. French
District Court Judge