

MAR 12, 2024 09:33 AM

*Mandy Harrison*  
Mandy Harrison, Clerk  
McIntosh County, Georgia

IN THE SUPERIOR COURT OF MCINTOSH COUNTY  
STATE OF GEORGIA

GEORGETTE “SHARRON” GROVNER, )  
MARVIN “KEN” GROVNER SR., LULA B. )  
WALKER, FRANCINE BAILEY, MARY )  
BAILEY, MERDEN HALL, FLORENCE ) CIVIL ACTION FILE NO.:  
HALL, YVONNE GROVNER, IRE GENE ) SUV2023000144  
GROVNER SR., )

Plaintiffs, )

v. )

MCINTOSH COUNTY, MCINTOSH )  
COUNTY BOARD OF COMMISSIONERS )  
KATE PONTELLO KARWACKI, DAVID )  
STEVENS, DAVIS POOLE, WILLIAM E. )  
HARRELL, AND ROGER LOTSON IN )  
THEIR OFFICIAL CAPACITIES, )

Defendants.

**ORDER GRANTING DEFENDANT’S MOTION TO DISMISS**

On February 20, 2024, the above-styled case came before the Court for oral argument on Defendants’ Motion to Dismiss (“Motion to Dismiss”) and Plaintiffs’ Motion for Leave to Amend the Complaint to Dismiss Less than All Parties (“Motion to Amend”). In consideration of the Motions, all pleadings of record, and the positions advanced by counsel during oral argument, Defendants’ Motion to Dismiss is GRANTED, Plaintiffs’ Motion to Amend is DENIED and this action is DISMISSED in its entirety.

**PROCEDURAL POSTURE**

On October 12, 2023, Plaintiffs Georgette Grovner, Marvin Grovner Sr., Lula Walker, Francine Bailey, Mary Bailey, Merden Hall, Florence Hall, Yvonne Grovner, and Ire Gene Grovner Sr. (collectively, “Plaintiffs”) filed a multi-count lawsuit against McIntosh County, Georgia and

Commissioners Kate Pontello Karwacki, David Stevens, Davis Poole, William E. Harrell, and Roger Lotson (collectively, “Defendants”). Among other claims, Plaintiffs’ Complaint seeks declaratory relief for various alleged constitutional claims, including substantive due process, procedural due process, and equal protection along with alleged violations of certain statutes. Plaintiffs’ Complaint relies, at least in part, on the sovereign immunity waiver in Ga. Const. Art. I, § 2, ¶ V (hereinafter “¶ V”). On November 20, 2023, Defendants moved to dismiss Plaintiffs’ Complaint pursuant to O.C.G.A. § 9-11-12(b) (1), (2), and (6). On December 20, 2023, Plaintiffs filed a Motion to Amend pursuant to O.C.G.A. §§ 9-11-15 and 9-11-21.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court finds that Plaintiffs relied on the sovereign immunity waiver in ¶ V for at least some of the claims raised in their Complaint. During argument, both parties cite to State v. Sass Group, LLC, 315 Ga. 893 (2023) and its progeny<sup>1</sup>, which specifically holds that in order to take advantage of the limited waiver of sovereign immunity provided by ¶ V, a plaintiff must comply with the exclusivity claim within the waiver, in that only the state (or local government) must be named as a party. Further, if the suit doesn’t comply, then the entire suit must be dismissed, even if some claims within the suit could have otherwise been brought on their own without relying on the waiver provided by ¶ V.

Plaintiffs’ Complaint clearly names McIntosh County and the individual County Commissioners as Defendants in this action. Wherefore, the Court finds that Plaintiffs’ Complaint has failed to comply with the exclusivity requirement as provided in ¶ V and is subject to dismissal.

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<sup>1</sup> Lovell v. Raffensperger, 2024 WL 171719 (January 17, 2024) and First Center, Inc. v. Cobb County, 2024 WL 422804 (February 6, 2024)

The next issue before the Court is whether Plaintiffs can amend their Complaint in an effort to save the suit from dismissal. On December 20, 2023, in connection with their response to Defendants' Motion to Dismiss, Plaintiffs filed a Motion to Amend. In support, Plaintiffs argue O.C.G.A. § 9-11-15, which allows Plaintiffs to amend their complaint as a matter of right without leave before the entrance of a pretrial order. Plaintiffs request concedes that they improperly named the individual County Commissioners in their suit and seeks to amend this defect by dismissing the individual Commissioners with leave of Court. Indeed, O.C.G.A. § 9-11-21 requires a court order before a party to a suit can be added or dropped and, as Plaintiffs are aware, in granting a motion to drop a party, the Court must exercise its discretion before making that decision.<sup>2</sup>

Plaintiffs argue that Sass Group provides dicta that such an amendment is permissible. In Sass Group, Plaintiffs filed an amended complaint which, while not specifically stated, appears to be an amendment without leave of court as provided by O.C.G.A. § 9-11-15.<sup>3</sup> The Georgia Supreme Court held in Sass Group that, while there was a disagreement between the parties as to which complaint was the operative pleading, the issue was not dispositive as to their ruling because both complaints named the District Attorney in addition to the State.<sup>4</sup> The distinction between Sass Group and the case at bar is that Plaintiffs here cannot amend their complaint to drop the individual Commissioners without leave of court. As such, the Court finds that the hurdle in considering Plaintiffs' request is that "sovereign immunity, like various other rules of jurisdiction and justiciability, is concerned with the extent to which a case may properly come before a court *at*

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<sup>2</sup> Plaintiffs cite to Little Tree, Inc. v. Fields, 240 Ga. App. 12 (1999), in that the dropping of parties "requires the exercise of discretion by the court."

<sup>3</sup> Footnote 3 of State v. Sass Group, LLC, 315 Ga. 839 (2023) provides that plaintiffs filed an amended complaint as to their claims (i.e. seeking declaratory and injunctive relief against the District Attorney and declaratory relief against the State).


<sup>4</sup> Footnote 9 of State v. Sass Group, LLC, 315 Ga. 839 (2023).

all.” New Cingular Wireless PCS, LLC v. Georgia Department of Revenue, 303 Ga. 468 (2018) (emphasis added). As sovereign immunity is a threshold issue, and with the Court’s previous finding that sovereign immunity has not been waived due to Plaintiffs’ failure to properly plead a waiver in their Complaint, the Court finds that this suit is not properly before the Court. Thereby, without jurisdiction, the Court lacks the authority to exercise any discretion that would permit Plaintiffs the ability to amend the Complaint.

### **JUDGMENT**

For these reasons, the Court hereby GRANTS Defendants’ Motion to Dismiss. However, the Court specifically provides that while Defendants’ motion raises several claims for dismissal, the Court’s decision is solely on the issue of subject matter jurisdiction. As such, this dismissal is without prejudice.

So ORDERED this 11<sup>th</sup> day of March, 2024.



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D. Jay Stewart  
Judge, McIntosh County Superior Court  
Atlantic Judicial Circuit