

**COMMONWEALTH OF KENTUCKY
NELSON CIRCUIT COURT
10th JUDICIAL CIRCUIT
CASE NO. CI-17-657**

DONALD THRASHER,

PETITIONER

vs.

DEAN WATTS,

RESPONDANT

VERIFIED PETITON FOR WRIT OF MANDAMUS

May It Please The Court:

INTRODUCTION

1. Petitioner Donald Thrasher (hereinafter “Thrasher” or “Petitioner”) comes now to this Honorable Court in a humble attempt to stop a pattern of undemocratic and illegal results from malfeasance, nonfeasance and misprision on the part of Dean Watts, Nelson County Judge Executive (hereinafter “Watts” or “Respondant”).
2. Watts has been a long time public servant of Nelson County. Unfortunately Watts' extended tenure in office has also seemingly caused an “above the law” attitude that is perniciously affecting his constituents. Lord Acton famously stated “*Power tends to corrupt and absolute power corrupts absolutely*”. Watts' astute ability to manipulate the Fiscal Court is indeed remarkable, ostensibly there are no active “checks and balance” to Watts *de facto* absolute power. Petitioner has two issues that directly affect him and is now compelled to seek a balance and check on that power.
3. Public Policy and the Public Interest are served when the 3 branches of government perform counter-balancing functions on a routine and continuing basis. This

Honorable Court is our blindfolded, balance-holding, sword carrying guardian that vigilantly stands against violations of law and insures democratic fairness, equatable administration and law abiding executive and legislative counterparts.

PARTIES

4. Petitioner Donald Thrasher is a resident of Nelson County Kentucky.

5. As a resident living on the most northerly portion of the former Louisville Rd (Highway 31E), Thrasher has been affected by the Executive Order that has changed the name of a state highway without the Nelson County Fiscal Court Approval.

6. As a resident of Nelson County, specifically District 4, Thrasher has been damaged by Watts willful failure to appoint a District 4 Constable as required under statute.

7. Defendant Dean Watts is the County Judge Executive of Nelson County and as such is *Ex Officio* member of the Nelson County Fiscal Court and is sued in his official capacity herein.

JURISDICTION AND VENUE

8. The Circuit Court has jurisdiction over the subject matter pursuant to Kentucky Revised Statute section 23A.010(1).

9. The 10th Judicial Circuit is the appropriate venue under Kentucky Revised Statue section 452.405, because the cause of action arose in Nelson County. The alleged illegal conduct takes place in Nelson County.

FACTUAL ALLEGATIONS

10. For over 15 years Watts has actively engaged in a pattern of official misconduct that has included usurping the Kentucky Constitution and violating state statute. In his extended tenure he has acted imperiously and created *de facto* absolute power to the detriment

of the average, ordinary, hard working Nelson County resident.

Official Misconduct by Violating His Duty Under KRS 63.220

11. KRS 63.220 states:

“Vacancies in county offices. (1) A vacancy in the office of Sheriff, Coroner, Surveyor, County Clerk, County Attorney, Jailer or Constable, shall be filled by the County Judge Executive.”

12. KRS 63.220 creates a non-discretionary ministerial duty to appoint a Constable that Watts must abide by, which he has illegally failed so to do for over 15 years.

13. In 1999 exhibiting his intolerance for dissent, even from a fellow elected county official, Watts manipulated the Nelson County Fiscal Court to raise the bond of Constable to \$1,000,000.00. This was done in retaliation to duly elected Constable Kevin Brummley challenging the \$25,000 bond amount. Even though this bond amount was raised in 1999 it still today is the highest office bond for any public office in Kentucky. The second highest is the State Treasurer at \$300,000.00.

14. Watts has methodically acted to essentially eliminate a constitutional office. Ostensibly Watts doesn't abide by KRS 63.220 because he feels the position of Constable is outdated or obsolete. However, instead of taking the proper action and lobbying the state legislature to change the statutory language, Watts acts on his own will and desire in callous disregard of the citizenry he represents and in direct contravention to the Constitution and statutes he is obligated to uphold.

15. Being an elected official in County Government the example his nonfeasance, malfeasance and misprision sets speaks volumes. If Nelson County residents were to follow Watts' example we could see residents who feel books are obsolete deciding to stop paying the library tax portion of their property tax. Those citizens would be dealt with swiftly, as they

should and as Watts should also be. His nonfeasance is contrary to public policy, and not in the long term public interest. Moreover, his nonfeasance and misprision subjects Watts to KRS 522.030.

16. Clearly KRS 522.030 creates the remedy for Watts' illegal conduct, it states in relevant part:

“A public servant is guilty of official misconduct in the second degree when he refrains from performing a duty imposed upon him by law.”

17. Official misconduct in the second degree is a Class B misdemeanor. County Officers may be removed from office by impeachment, or upon conviction for misconduct in office or by any other procedure the General Assembly may establish.

18. The coincidental irony is the Public Official Bond that insures the Constable performs his statutory duties was raised by Watts to \$1,000,000.00 even though Nelson County never made a claim that a constable failed to perform his or her statutory duties. Watts on the other hand has violated his statutory duties by failing to appoint a Constable, which Nelson County could now seek claim against Watts' bond.

Watts Has Failed To Appoint A County Surveyor

19. KRS 63.220 also creates a non-discretionary duty for Watts to appoint a County Surveyor. Again Watts has failed to fulfill his statutory obligation and this further exhibits how he conducts Nelson County operations to his own will and desire in contravention to Kentucky laws.

Executive Order Raises Legality Issues (Louisville Rd. Name Change)

20. Continuing his pattern of conduct recently Watts demonstrated his abhorrence of actual public input and democratic process. In late September 2017 Watts signed an

executive order which changed the name of 3 sections of Louisville Rd. (Highway 31E). The two sections of Louisville Rd. south of State Highway 523 were dedicated to Nelson County and the Nelson County Fiscal Court accepted the sections into their system on September 19, 2017. The section north of the previous 523/Louisville Rd. juncture was officially renumbered by the Commonwealth of Kentucky Transportation Cabinet and is now State Highway 523 extending in Nelson County all the way to the Spencer County/Nelson County boundary. Watts Executive Order was based on KRS 179.330.

KRS 179.330 Does Not Create Unilateral Authority

21. Watts can not unilaterally change the name of a County Road and simultaneously direct that street signs be erected reflecting that name without Fiscal Court approval.

22. Stating in relevant part:

KRS 179.330 Names of county roads -- How changed and established -- Erection of signs. (1) Every county road shall be known by the name by which it was designated on the map or plat or record in the office of the county clerk of the county in which it is located or by the order of the court establishing the road, or by the deed conveying the right-of-way for the road to the county. (2) When the name of any road has been designated as provided in subsection (1) of this section, the name of the road can only be changed by an order of the county judge/executive or the mayor of a consolidated local government. On similar proceeding an order may be issued designating a name for any unnamed road in the county. (3) The fiscal court or a consolidated local government may cause signs bearing the name of each road as fixed by the county judge/executive or the mayor of a consolidated local government, to be placed on the roads, or it may, by a resolution duly recorded, authorize any person or organization to erect signs, approved as to form by the fiscal court or a consolidated local government, bearing the name designated to the road by the county judge/executive or the mayor of a consolidated local government

23. Reading the first 2 subsections of KRS 179.330 in isolation could give the impression that Watts has the authority to unilaterally make the name change. However, KRS 179.330(3) clearly inserts the Fiscal Court into the process of the statute. By virtue of the "power of the purse" the road signs have to be approved by the Fiscal Court. Authority to regulate and control the fiscal affairs of the county is vested with the

fiscal court as a body. See KRS 67.080(1)(c). The Kentucky Court of Appeals in *Carey v Pulaski County Fiscal Court* (2013) stated:

“[A]s they currently appear (and as they appeared in 1976), KRS 179.330(1) and (2) require an additional order from the Fiscal Court, also entered of record, to authorize changing the name of a county road (e.g., from Union–Science Hill Road to Edward Meece Road).”

24. Amazingly, during Fiscal Court proceedings on November 7, 2017, when Petitioner brought up the issue of obtaining Fiscal Court approval for a road name change, Judge Watts implied the Fiscal Court does his will and bidding and there is no question the Fiscal Court would acquiesce to his will and desire and approve the name change. Given Watts' past conduct retaliating against duly elected Constable Brummley it is easy to see why a magistrate would be hesitant to oppose the imperious power of Watts.

The Executive Order Is Illegal And Not Valid For Non-County Roads

25. Watts Executive Order dated September 27, 2017 statutory authority purports to be KRS 179.330, however, everything north of the previous Highway 523/Louisville Rd. juncture is a state highway. The Executive Order fails to provide any statutory authority, regulation or case law for anything except a county road. Petitioner avers herein that the Executive Order is therefore not legally valid for non-county roads.

CLAIMS FOR WRIT OF MANDAMUS

26. The basis for this Petition is that Watts has failed to abide by Kentucky Law, alternatively, to the extent Watts could be deemed to be abiding by Kentucky Law , he is acting erroneously.

27. This Honorable Court is the only remedy available to Petitioner. This Petition is being filed in this Honorable Court for mandamus pursuant to CR 81.

28. When a County Judge Executive that is entrusted by the county residents to conduct operations in a lawful manner fails to abide by the law and Constitution, it is well established great and irreparable injury may always be presumed from the failure of an officer to perform a mandatory duty required of him by statute or otherwise. *Bays v. Bradley Mills*, 254 SW 2d 348 Ky: Court of Appeals 1953

29. Great injustice and irreparable injury is occurring and Judge Watts misconduct and failure to abide by Kentucky law is ongoing and therefore this Honorable Court has a right to issue a writ of mandamus. *Humana v. NKC Hospitals*, Ky., 751 S.W.2d 369 (1988), and *Southeastern United Medigroup v. Hughes*, Ky., 952 S.W.2d 195 (1997).

C OUNTS 1 & 2
(FAILURE TO APPOINT CONSTABLES AND COUNTY SURVEYOR)

30. Petitioner incorporates each and realleges each of the allegations contained in Paragraph 1 to 29 as if fully incorporated and rewritten herein.

31. KRS 63.220 states:

“Vacancies in county offices. (1) A vacancy in the office of Sheriff, Coroner, Surveyor, County Clerk, County Attorney, Jailer or Constable, shall be filled by the County Judge Executive.”

KRS 63.220 is non-discretionary ministerial duty Watts is obligated to appoint Constables and a County Surveyor in Nelson County upon vacancies of that office. Whether or not Watts agrees with the law is inconsequential.

32. Because Watts has failed to appoint a Constable in Nelson County in over 15 years he has failed to perform his ministerial, statutory duty and mandamus is appropriate. *Howard v. Carty*, Ky., 275 S.W.2d 68 (1955). Petitioner as a resident of District 4 is entitled to have a

constable as stated in the Kentucky Constitution, and hereby requests a writ of mandamus be issued compelling Watts to appoint a Constable in District 4 of Nelson County forthwith.

33. Petitioner has suffered damages by Watts failure to appoint a constable in District 4.

34. Watts has failed to appoint a County Surveyor as required by Kentucky law, Petitioner is suffering irreparable harm by the Great Injustice Watts' disobedience to the law creates.

COUNT 2
(FAILURE TO OBTAIN FISCAL COURT APPROVAL FOR STREET SIGNS)

35. Petitioner incorporates each and realleges each of the allegations contained in Paragraph 1 to 34 as if fully incorporated and rewritten herein.

36. The street signs erected based on Watts Executive Order were done in contravention to KRS 179.330(3) without Fiscal Court approval. Therefore, Judge Watts should be required to remove the signs or put the issue before the Fiscal Court for approval.

37. Petitioner as a resident on the road has suffered damages by Watts failure to abide by the law.

COUNT 3
(STATUTORY AUTHORITY CITED IN WATTS' EXECUTIVE ORDER DOESN'T APPLY TO STATE HIGHWAYS)

38. Petitioner incorporates each and realleges each of the allegations contained in Paragraph 1 to 37 as if fully incorporated and rewritten herein.

39. Petitioner resides on State Highway 523, not a county road. Therefore, Watts Executive Order does not apply.

40. Petitioner suffers damages by Watts execution of his Executive Order.

41. Watts should be Mandatorily directed to rescind the portion of the Executive

Order that does not pertain to a county road.

COUNNT 4
(WATTS SHOULD BE REQUIRED TO PUT THE ROAD
NAME ISSUE BEFORE THE FISCAL COURT FOR A VOTE)

42. Petitioner incorporates each and realleges each of the allegations contained in Paragraph 1 to 35 as if fully incorporated and rewritten herein.

43. As stated by the Kentucky Court of Appeals in *Carey v Pulaski County Fiscal Court* (2013):

“[A]s they currently appear (and as they appeared in 1976), KRS 179.330(1) and (2) require an additional order from the Fiscal Court, also entered of record, to authorize changing the name of a county road (e.g., from Union–Science Hill Road to Edward Meece Road).”

44. Watts should be mandatorily directed to put the road name and sign issue before the Fiscal Court.

45. As a resident on the road Petitioner is damaged by the failure of Watts to obtain Fiscal Court approval.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Donald Thrasher prays this Honorable Court grant relief as follows:

1. For a writ of mandamus be issued compelling Watts to appoint a Constable in District 4 of Nelson County and a County Surveyor forthwith;
2. For a writ of mandamus directing Watts to remove the road signs that were erected on the former Louisville Rd. without Fiscal Court approval or in the alternative direct Watts to put the issue before the Fiscal Court for approval;
3. For a writ of mandamus directing Judge Watt to rescind the portion of the Executive Order that does not pertain to a county road;
4. For a writ of mandamus directing Watts to put the road name and sign issue before the Fiscal Court;
6. For cost of suit incurred herein by Petitioner;

