

STATE OF INDIANA

IN THE GRANT SUPERIOR Court I

SS:

GRANT COUNTY

THOMAS R. HUNT
FORMERLY JUDGE, GRANT
CIRCUIT COURT

Plaintiff

vs.

CASE NO. 27D01-0611-PL-663

MIKE SCOTT, MYRON BRANKLE,
JUDY CARMICHAEL, MICHAEL
ROW, TIMOTHY ENYEART, JIM
McWHIRT AND JOHN LAWSON
each in his representative capacity
as a member of and all comprising
the Grant County Council; ERIC
WALTS, JEREMY DILLER and
MARK BARDSLEY each in his
representative capacity as a member
of and all comprising the Grant County
Board of Commissioners; and MICHAEL
BURTON in his capacity as the
Grant County Auditor
Defendants

FILED

NOV 21 2007

J. Mark Flanagan
CLERK GSC 1

FINDINGS OF FACT, CONCLUSIONS OF LAW AND SUMMARY JUDGMENT

This matter is before the Court on Plaintiff's Motion for Summary Judgment and Defendants' Motion for Summary Judgment. The Court having heard the oral arguments of Counsel and taken motions under advisement now enters the following Findings of Fact, Conclusions of Law and entry of Summary Judgment

FINDINGS OF FACT

1. Plaintiff, Thomas R. Hunt, was the duly elected and sitting Judge of the Grant Circuit Court from September 22, 1980, to December 31, 2006.

2. The Court finds the Defendants, Mike Scott, Myron Brankle, Judy Carmichael, Michael Row, Timothy Enyeart, Jim McWhirt, and John Lawson, were, at all times relevant herein, the duly elected and sitting members of the Grant County Council, the fiscal body for Grant County, Indiana, in charge of appropriating funds necessary for the operation of various departments and offices in Grant County including the payment of wages and salaries of employees and elected officials in Grant County.
3. At all times relevant herein and prior to 2005, and pursuant to Indiana Code 36-2-5-14, the Grant County Council exercised its discretionary function and appropriated funds for an additional appropriation to be paid to the Plaintiff in the annual amount of \$5,000.00, which was sent to the state and distributed to the Plaintiff as part of his bi-weekly pay.
4. The Court finds that during the winter of 2005, the Indiana General Assembly enacted a pay adjustment for all Indiana judges effective July 1, 2005, increasing all Indiana judges' compensation from \$90,000.00 to \$110,500.00, and allowing for an additional \$5,000.00 county supplement. This was the first compensation adjustment that the Indiana trial judges had received from the legislature since the \$90,000.00 amount was set effective July 1, 1995.
5. In late August or early September 2005, the Grant County Council adopted a budget eliminating the \$5,000.00 judges' supplemental appropriation effective January 1, 2006.
6. The Court finds that the Defendants' claim their action was based on financial difficulties in balancing the 2006 budget and, in part, on the knowledge that all Indiana judges would be receiving a \$20,500.00 salary adjustment effective July 1, 2005. The Court finds that the Plaintiff's position is that his compensation was diminished by the action taken by the Grant County Council after the state salary adjustment went into effect on July 1, 2005, and that as a result of the Defendant Council's action, his pay that he received beginning January 2006, was reduced from the amount he was paid during the last six months of 2005.
7. The Court finds that the Defendants position is that the Plaintiff's compensation was not diminished as a result of the elimination of the \$5,000.00 discretionary appropriation since it is undisputed that the Plaintiff's total compensation for his services as judge of the Grant County Circuit Court in the year 2006, was \$7,063.08 more than the compensation he received in the year 2005. The Defendants further argue that the discretionary nature of the supplement should automatically allow the council to fund or not fund the additional compensation without implication of constitutional prohibitions.

8. The Court finds that on the surface both parties positions appear to have some merit. However, to resolve the dispute a closer examination of the constitutional language and case interpretation must be addressed.

CONCLUSIONS OF LAW

1. Article 7, Section 19 of the Indiana Constitution provides: “The Justices of the Supreme Court and the Judges of the Court of Appeals and of the Circuit Courts shall at stated times receive a compensation which shall not be diminished during their continuation in office.”
2. Indiana Supreme Court has said the purpose of this constitutional provision “is to preserve the independence of the working judiciary in such a clear and unmistakable manner as to entirely rule out conflict and argument on the point”. Board of Trustees of the Public Employees Retirement Fund vs Hill, 472 N.E.2d 204, 209 (Ind. 1985).
3. In Indiana Judges’ compensation is established by the Indiana General Assembly pursuant to Indiana Code 33-38-5-6 which may be supplemented pursuant to Indiana Code Section 36-2-5-14.
4. In Tipton County ex rel Tipton County Council vs State ex rel Nash, 731 N.E. 2d 12 (Ind. Ct. App. 2000) the Indiana Court of Appeals had before it a case somewhat similar to this case. Judge Dane Nash was judge of the Tipton Circuit Court and had been receiving the County supplement from Tipton County. In the winter of 1995, the General Assembly enacted a pay adjustment for all trial court judges increasing the State’s portion of the judge’s compensation to \$90,000.00 effective July 1, 1995. The Tipton County Council, being made aware of the increase, voted to eliminate the additional compensation it was paying Judge Nash effective July 1, 1995, the same day the State increase went into effect. In examining Indiana Code Section 33-38-5-6 and 36-2-5-14, the Indiana Court of Appeals said that the State’s portion of the judge’s salary and county portion constituted one salary not two separate incomes for the purposes of deciding whether Tipton County had violated the state constitution when it eliminated its portion of Judge Nash’s compensation. By finding in favor of the County, the Court of Appeals established a road map for counties wishing to eliminate their supplemental support for judge’s compensation by coordinating the elimination of the supplement to take effect the same day the State’s portion was increased by an amount greater than the county reduction.

5. The Court finds that pursuant to the plain language of the Constitution, the County could have reduced its contribution to a judge's compensation at the end of the judge's continuation in office.

DISCUSSION

The language of the Constitution uses specific words including; stated times, compensation, diminished, and continuation in office. As of July 1, 2005, a judge of the Circuit Court in fact received a stated compensation equivalent to \$110,500.00 plus the county supplement, if any, which had been appropriated. The Grant County Council's action to eliminate this supplement six months after July 1, 2005, in fact, diminished the Plaintiff's compensation while he continued in office until December 31, 2006. The effect of the Council's action was to reduce Judge Hunt's salary adjustment by approximately 25% as compared to a salary adjustment received by other judges on July 1, 2005.

When looking at the situation over a larger time frame during the decade between July 1, 1995, and July 1, 2005; the Indiana judges had not received any adjustment to their compensation. By not providing for frequent cost of living adjustments, the Indiana legislature had allowed judge's compensation to be greatly diminished in value during their continuation in office during the decade between July 1, 1995, and July 1, 2005. While an increase of \$20,500.00 appears to be large it did not, in fact, restore the judge's to their former level of compensation as if they had received simple annual pay increases for cost of living. Had judges received annual increases equal to the adjustments for cost of living paid to social security beneficiaries; the stated compensation would have been greater than the statutory increase to \$110,500.00. The adjustment effective July 1, 2005, may have restored a substantial portion of the value of the judge's compensation which had been lost over the previous decade. The judge's received no additional compensation for the amounts lost during the decade wherein no cost of living adjustment was made. If the real value of Judge Hunt's stated compensation he received on July 1, 1995, was compared with the stated compensation he received as of July 1, 2005, the value of the compensation would be less in 2005.

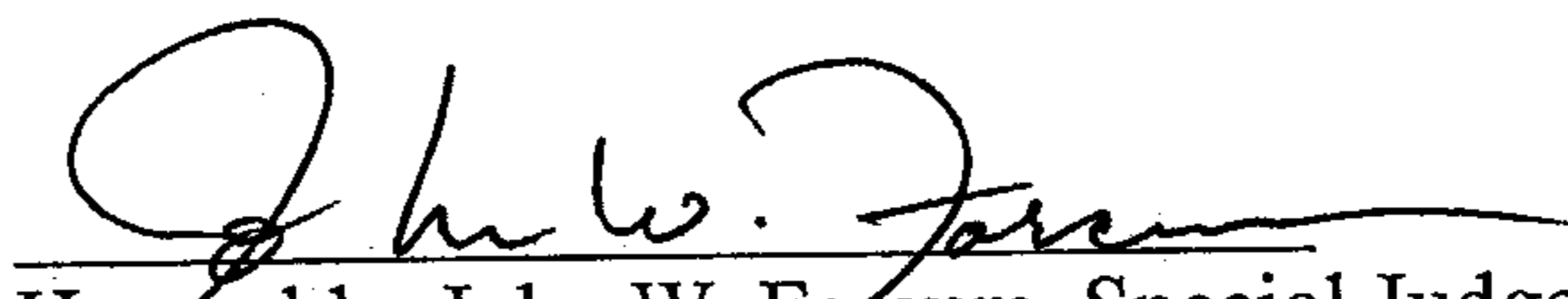
The effect of the County Council's removal of the supplement was, in fact, a diminishment of his compensation during the continuation of his time in office. The Court finds that the action of the Grant County Council of eliminating the \$5,000.00 discretionary appropriation paid to the Plaintiff effective January 1, 2006, did constitute a violation of Article 7, Section 19 of the Indiana

Constitution. Accordingly, The Court enters judgment in the Plaintiff's favor and against the Defendants:

1. for \$5,000.00, the amount of the county supplement wrongfully eliminated from the Plaintiff's compensation for the year 2006
2. interest at eight percent per annum from January 1, 2006, on the unpaid amount
3. Plaintiff shall further recover his filing fee.

The Court does not award attorney fees pursuant to Indiana Code 34-52-1-1

SO ORDERED THIS 21st Day of November 2007.


Honorable, John W. Forcum, Special Judge
Grant Superior Court I